TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 232

~~THOMAS W. MILLER~~ Howard Sutherland, AS ALIEN PROPERTY CUSTODIAN,
APPELLANT,

vs.

RICHARD MAYER, EDWIN REIS, KARL B. STRAUSS,
ET AL., ETC.

No. 233

RICHARD MAYER, APPELLANT,

vs.

~~THOMAS W. MILLER~~ Howard Sutherland, ALIEN PROPERTY CUSTODIAN;
EDWIN REIS, KARL B. STRAUSS, ET AL., ETC.

No. 234

EDWIN REIS, KARL B. STRAUSS, AND ANNY REIS, ETC.,
APPELLANTS,

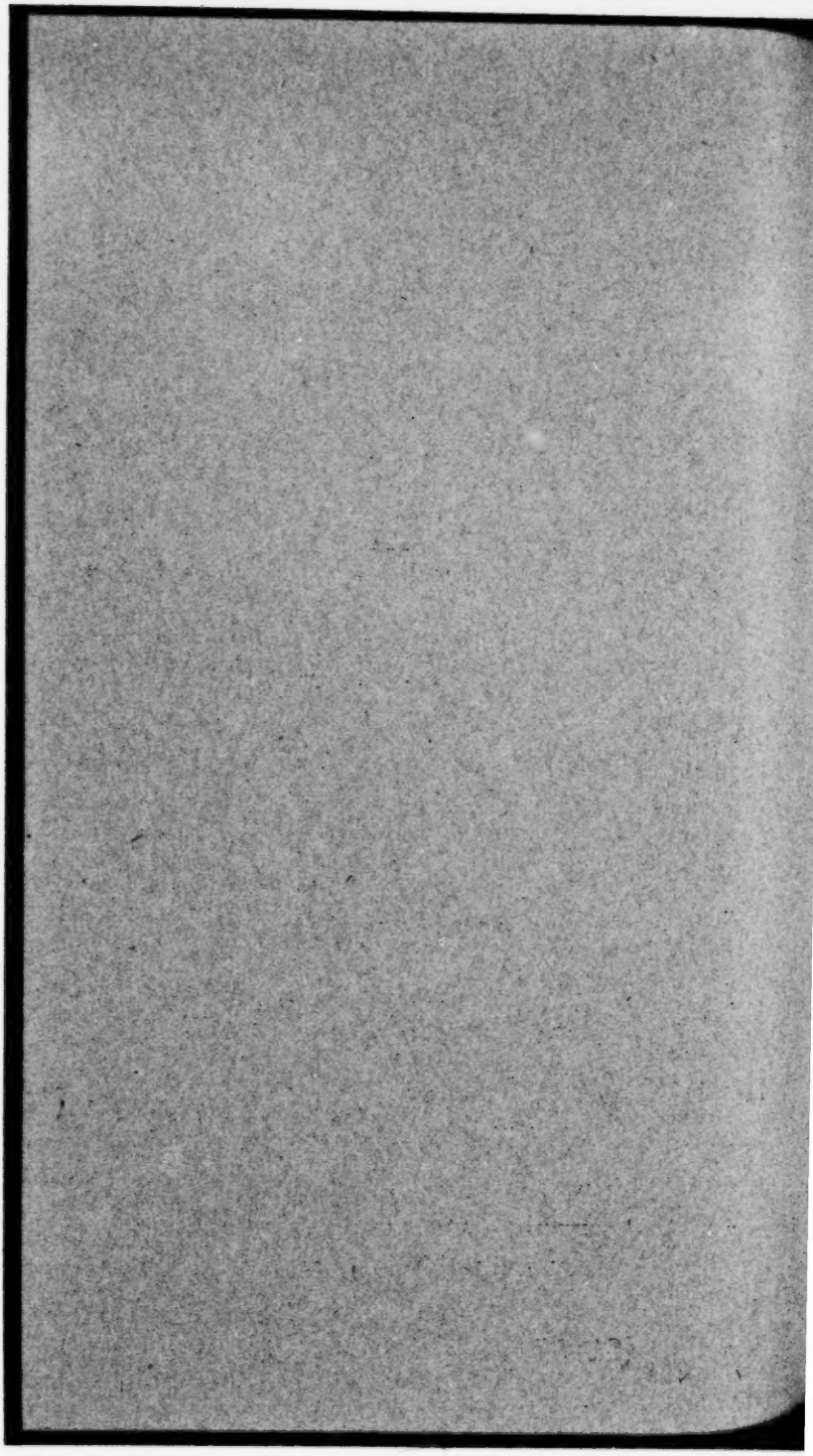
vs.

RICHARD MAYER AND ~~THOMAS W. MILLER~~ Howard Sutherland, AS ALIEN
PROPERTY CUSTODIAN

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIRST CIRCUIT

FILED DECEMBER 29, 1924

(30,771, 30,772, 30,773)



(30,771, 30,772, 30,773)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 232

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, APPELLANT,

vs.

RICHARD MAYER, EDWIN REIS, KARL B. STRAUSS, ET AL., ETC.

No. 233

RICHARD MAYER, APPELLANT,

vs.

THOMAS W. MILLER, ALIEN PROPERTY CUSTODIAN; EDWIN REIS, KARL B. STRAUSS, ET AL., ETC.

No. 234

EDWIN REIS, KARL B. STRAUSS, AND ANNY REIS, ETC., APPELLANTS,

vs.

RICHARD MAYER AND THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

INDEX

	Original	Print
Proceedings in the United States circuit court of appeals, first circuit	1	1
Caption ..... (omitted in printing) ..	1	1

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 13, 1925

	Original	Print
Record from district court of the United States, district of Massachusetts	1	1
Caption (omitted in printing)	1	1
Bill of complaint	1	1
Exhibit A—Partnership agreement	10	7
Exhibit B—Demands by Alien Property Custodian, etc.	16	12
Answer of Richard Mayer et al	36	27
Exhibit A—Accounting by Richard Mayer, etc	37	27
Answer of Edwin Reis et al	46	34
Exhibit I—Inheritance certificate	55	40
II—Account of copartnership of Reis & Co.	56	41
III—Cancellation agreement	63	46
IV—Translation of cancellation agreement	64	47
V—Letter, December 6, 1918, Guy Murchie to Karl B. Strauss, and cablegram by Richard Mayer, etc	64	47
A—Reis & Company, statement of condition, December 31, 1916	67	49
B—Same, December 31, 1917	71	51
C—Extract from Richard Mayer's capital account up to December 31, 1917, etc	75	57
Minute entries	82	65
Final decree	83	66
Note of appeal	85	67
Opinion, Johnson, J	85	68
Petition for appeal of plaintiff, Thomas W. Miller	95	74
Assignments of error of plaintiff, Thomas W. Miller	96	75
Petition for appeal of defendant Richard Mayer	97	76
Assignments of error of defendant Richard Mayer	98	77
Bond on appeal (omitted in printing)	99	78
Petition for appeal of defendants Edwin Reis et al	101	78
Assignments of error of defendants Edwin Reis et al	101	78
Bond on appeal (omitted in printing)	103	80
Statement of evidence	105	80
Agreed facts	105	80
Testimony of W. T. Hynes	106	80
Testimony of Edwin Reis	107	81
Offers in evidence	126	94
Plaintiff's Exhibit 1—Letter, June 23, 1922, Field to McClennen	130	97
Plaintiff's Exhibit 2—Document, August, 1919, by Minister of Interior Affairs, Germany	131	97
Plaintiff's Exhibit 3—General power of attorney, September 28, 1922	132	99
Plaintiff's Exhibit 4—Report of Haskins & Sells, accountants, on Richard Mayer export department, etc.	133	100
Plaintiff's Exhibit 5—Report of Haskins & Sells on the Richard Mayer Co., October 10, 1914, to May 31, 1918	145	109
Plaintiff's Exhibit 6—Report of Haskins & Sells on the Anglo-American Cotton Company	164	122

	Original	Print
Plaintiff's Exhibit 11—Private ledger account of Richard Mayer on the books of Reis & Co.	175	131
Defendants' Exhibit IV—Transcript from books of Reis & Co., showing rates of exchange	178	137
Defendants' Exhibit V—Tax receipt for taxes paid for Richard Mayer	179	137
Defendants' Exhibit VI—Contract between Reis & Co. and Gustaf Ely, May 22, 1913	181	139
Defendants' Exhibit VII—Contract between Reis & Co. and Alex Leiser, October 13, 1910	183	141
Defendants' Exhibit VIII—Contract between Reis & Co. and Adolf Senft, May 12, 1913	187	144
Defendants' Exhibit IX—Contract between Reis & Co. and Friederick Heinstein, September, 1910	187	144
Defendants' Exhibit XII—Statement of actual value of Richard Mayer's share in the European assets of Reis & Co. of April 6, 1917	190	146
Defendants' Exhibit XIII—Statement of actual value of Richard Mayer's share in the European assets of Reis & Co. on March 26, 1923	190	146
Joint praecipe for transcript of record	191	147
Citations and services (omitted in printing)	192	147
Clerk's certificate	195	148
Order enlarging time	195	148
Opinion, Hale, J.	196	149
Final decrees	206	155
Petition of Thomas W. Miller for appeal and order allowing same	208	156
Assignments of error of Thomas W. Miller	208	157
Petition of Edwin Reis et al. for appeal and order allowing same	211	159
Assignments of error of Edwin Reis et al.	212	159
Bond on appeal (omitted in printing)	214	162
Petition of Richard Mayer for appeal and order allowing same.	217	162
Assignment of errors of Richard Mayer	217	162
Bond on appeal (omitted in printing)	217	162
Citations and services (omitted in printing)	219	163
Clerk's certificate	222	163

[fol. 1] [Captions omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MASSACHUSETTS

No. 1758, Equity Docket

THOMAS W. MILLER, Alien Property Custodian, Plaintiff,

v.

RICHARD MAYER et al., Defendants

BILL OF COMPLAINT—Filed September 1, 1922

Thomas W. Miller, as Alien Property Custodian, an officer of the United States, commorant at Washington in the District of Columbia, plaintiff, brings this bill of complaint against Richard Mayer, a naturalized citizen and inhabitant of the United States, and resident in the City of Boston in the County of Suffolk and Commonwealth and District of Massachusetts, Richard Mayer Company, a corporation duly organized under the laws of the Commonwealth [fol. 2] of Massachusetts, and a citizen thereof, and having its usual place of business in Boston in said Commonwealth and District, Anglo American Cotton Company, a corporation duly organized under the laws of the Commonwealth of Massachusetts and a citizen thereof, and having its usual place of business in Boston in said Commonwealth and District, Edwin Reis, a citizen and inhabitant of Heidelberg in the State of Baden, Germany, Karl B. Strauss, a citizen and inhabitant of said Heidelberg, estate of Ludwig Reis, late of Mannheim in said Baden, Anny Reis, a citizen and inhabitant of said Mannheim, individually and as trustee for Anneliese Reis and Ruth F. Reis, both her two minor children, of said Mannheim, defendants.

As ground for relief in equity the plaintiff says:

1. The plaintiff, Thomas W. Miller, is Alien Property Custodian at Washington in the District of Columbia and brings this suit in his official capacity as such. He was appointed to that office by the President of the United States pursuant to the Act of Congress approved October 6, 1917, as amended, known as the "Trading with the Enemy Act," and is the successor in that office to Francis P. Garvan, who was appointed to that office by the President of the United States as successor to A. Mitchell Palmer, who was appointed to that office by the President of the United States in October, 1917, and who resigned in 1919. As such Alien Property Custodian the plaintiff is entitled to the possession and custody of all property which, after investigation, he or either of his predecessors in said office, or the President of the United States, have determined to belong to or to be held for, by, on account of, on behalf of or for

the benefit of an enemy or ally of an enemy, as defined by said act, except such property as may have been released or disposed of, pursuant to law or in obedience to the decree or judgment of a properly constituted court of the United States.

2. The defendant, Richard Mayer, is a resident of Boston in the District of Massachusetts. On or about May 24, 1913, he became a member of the partnership of Reis & Company, by virtue of an agreement of co-partnership executed by the respective partners at [fol. 3] Friedrichsfeld, Baden, Germany. The seat or headquarters of said partnership of Reis & Company was established at said Friedrichsfeld, and the principal books of account of said partnership were there kept under the supervision of the partners, there resident. A copy of a translation of said agreement is hereto annexed and marked "Exhibit A" and made a part hereof. Said defendant was a member of said co-partnership at the outbreak of war between the United States and the Imperial German Government on April 6, 1917.

3. The defendants, Edwin Reis and Karl B. Strauss, together with said Ludwig Reis during his life time, as general or "personally liable" partners, and defendant Anny Reis, individually and as trustee for her minor children, as a special partner, were the other members of said co-partnership.

4. The defendant, Richard Mayer Company, was organized as a corporation under the laws of the District of Massachusetts in the year 1914. Its entire capital was paid in by the partnership of Reis & Company, and said corporation was an agency or instrumentality of said partnership for the conduct of the business of said partnership. All the capital stock and assets of said corporation are equitably the property of said partnership of Reis & Company.

5. The defendant, Anglo American Cotton Company, was organized as a corporation under the laws of the District of Massachusetts in the year 1915. Its entire capital was paid in by the partnership of Reis & Company, and said corporation was an agency or instrumentality of said partnership for the conduct of the business of said partnership. All the capital stock and assets of said corporation are equitably the property of said partnership of Reis & Company.

6. The plaintiff is informed and believes that the post office addresses of said Edwin Reis and Karl B. Strauss, said Estate of Ludwig Reis and said Anny Reis, are "care of Reis & Company, Friedrichsfeld, Baden, Germany."

7. On or about May 28, 1918, and on or about September 20, 1918, A. Mitchell Palmer, Alien Property Custodian of the United [fol. 4] States duly appointed, qualified and acting under the provisions of the Act of Congress known as the "Trading with the Enemy Act" approved October 6, 1917, determined after investigation that said co-partnership of Reis & Company was an enemy within the meaning of said act, not holding a license granted by the

President, and said custodian thereupon required to be conveyed to him all the money and property held for, on account of, on behalf of or for the benefit of said enemy partnership by the defendants Richard Mayer, Anglo-American Cotton Company and Richard Mayer Company. Said custodian also determined after investigation that certain property or securities deposited by defendant Richard Mayer with Messrs. Lee, Higginson & Company, bankers, and with the First National Bank of Boston, Massachusetts, belonged to, or were held for, by, on account of, on behalf of or for the benefit of said co-partnership of Reis & Company, and said custodian required that said property and securities be conveyed, transferred and delivered to him to be held, administered and accounted for as provided by law. Copies of the determinations and requirements by said custodian are attached hereto and marked "Exhibit B," and made part of this bill of complaint.

8. All of the property so required to be conveyed to the Alien Property Custodian was in fact the property of, or was held by, for, on account of, or for the benefit of said co-partnership of Reis & Company.

9. All of the members of said co-partnership except the defendant Richard Mayer were enemies within the meaning of the Trading with the Enemy Act.

10. On or about the seventh day of April 1919, the defendant Richard Mayer brought a suit in equity in this court against Francis P. Garvan, as Alien Property Custodian, John Burke, Treasurer of the United States, and others, seeking to establish a right, title or interest in the property required to be conveyed to said Alien Property Custodian, or a debt or obligation against the enemy or enemies owning said property. Said suit was brought under the authority of Section 9 of the Trading with the Enemy Act as amended, and [fol. 5] was numbered 925 on the equity docket of this court.

11. On or about the fourth day of May, 1922, a final decree was entered by this court, after a mandate from the Circuit Court of Appeals for the First Circuit in said suit brought by Richard Mayer, whereby it was ordered, adjudged and decreed—inter alia—as follows:

"3. That the said partnership of Reis & Company was dissolved by operation of law upon the outbreak of war between the United States and the Imperial German Government on April 6, 1917.

4. That according to German law, a partnership of this character would not be dissolved by such outbreak of war.

5. That the plaintiff, Richard Mayer, is neither an enemy -or ally of enemy but the said Edwin Reis and Karl B. Strauss are enemies within the purview and meaning of the Trading with the Enemy Act, the amendments thereto and the executive orders and proclamations issued thereunder.

7. That the interest of the plaintiff in the said partnership was 20 per cent of the profits and losses thereof in addition to the capital contributed by him and the interest thereon.

9. That upon the present state of the evidence, this court is unable to state an account as between the parties, or Richard Mayer and the Alien Property Custodian, there being no evidence of the actual value of the American property or of the German or English property, and there being no evidence of the liabilities of the firm.

10. That the complaint on the dissolution of the partnership by the outbreak of the war had a lien on the American assets and their proceeds for what was due him from the partnership on an accounting of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting.

11. That the plaintiff is entitled to the immediate re-possession [fol. 6] of all property so seized and the proceeds arising therefrom. That the plaintiff shall hold possession of the money and property so delivered to him under the terms and provisions of Section 8 (a) of the Trading with the Enemy Act, and with the rights and duties in respect thereof which are set forth in paragraph 10 of this decree."

12. Until the entry of said final decree the plaintiff and his predecessors in the office of Alien Property Custodian, and the Treasurer of the United States, held the money and property required to be conveyed to said A. Mitchell Palmer as Alien Property Custodian and administered the same in strict accordance with law, and under the provisions of the Trading with the Enemy Act and the amendments thereto and the proclamations and orders lawfully made by the President of the United States.

13. Since the entry of said final decree, the plaintiff has fully complied with the orders of this court in respect to said property, and has turned over and delivered to the defendant, Richard Mayer, all the property in his possession as the property of the said partnership of Reis & Company, and the Treasurer of the United States has turned over to the said defendant all the moneys in his possession belonging to said partnership of Reis & Company.

14. After the outbreak of the war between the United States and Germany, the partnership not having been dissolved, under German law, by that event, as appears from paragraph 3 of the decree set forth in paragraph 11 above, the partners resident in Germany continued to conduct the business and affairs of the partnership which were subject to their discretion and control in exactly the same manner as before the declaration of war, duly crediting the defendant, Richard Mayer, his share of the proceeds of the business and charging him with expenditures made upon his account or at his order, and causing the books of the said partnership to show at all times the interest of defendant Richard Mayer in the assets of the partnership in the possession of, or subject to the control of, the partners resident in Germany.

[fol. 7] 15. By reason of events over which the partners resident in Germany had no control and for which they have no responsibility, it has been hitherto impossible to have any accounting as to the respective interests of the partners, including the defendant Richard Mayer, in the assets of the partnership, either as to the assets in Europe or as to those within the possession and subject to the control of the defendant Richard Mayer.

16. The value of the assets of the partnership has been greatly diminished by reason of certain taxes levied upon them and collected by the Imperial German Government and by the Duchy of Baden on account of profits growing out of the existence of the war between the Imperial German Government and other powers.

17. The value of the assets situated without the United States has greatly depreciated since the dissolution of the partnership and pending the accounting now prayed for, but said depreciation has been due to no default or neglect on the part of any of the partners resident in Germany.

18. The amount due defendant Richard Mayer upon the accounting now prayed for has been greatly diminished by reason of certain payments made by the partners resident in Germany to certain relatives of said defendant Richard Mayer, enemies of the United States within the meaning of the Trading with the Enemy Act, such payments having been made at the order of the defendant, Richard Mayer.

19. The plaintiff is informed and believes that the defendant, Richard Mayer, has wrongfully and without authority attempted to convert a large amount of the assets of the said partnership to his own use and has made certain unauthorized, improper and unlawful expenditures of the funds of the partnership committed to his charge, whereby said assets and funds have been wasted and lost and said defendant Mayer has thereby become indebted to said partnership in the amount of said losses and for interest upon the sums wrongfully converted to his own use.
The plaintiff is informed and believes

20. That, as a result of the matters set forth in paragraph 19 hereof, the amount which otherwise would be due to said Mayer, [fol. 8] upon an accounting of the partnership affairs, has been largely diminished.

21. The defendant, Richard Mayer, is under a duty properly to account for all the assets of the partnership of Reis & Company which have come into his hands and possession, or for which he is by reason of the foregoing responsible.

22. The plaintiff, as Alien Property Custodian, is entitled, as against said Richard Mayer to the re-possession of such of the assets of Reis & Company as may have been within the terms of the demands herein before set forth and may have come into the hands

or possession of said Mayer or for which said Mayer may be responsible.

23. The plaintiff is informed and believes that a proper accounting of the affairs of said partnership will show that the assets of the partnership now in possession or control of said Mayer, or for which he may be found to be responsible, are greatly in excess of the amount properly to be allowed to said defendant Mayer upon such accounting.

24. The plaintiff is informed and believes that the present value of the assets of the partnership of Reis & Company, other than those in the United States, and including defendant Mayer's capital contribution of 200,000 marks does not exceed the amount of 11,489,168.41 marks and that the proportion thereof belonging to the defendant Mayer, and without any deduction by reason of any dealings or neglect on the part of said Mayer with respect to the assets which have been under his control and possession, does not exceed 1,836,386.80 marks.

25. The plaintiff is informed and believes that the value of the property required to be conveyed to the Alien Property Custodian as belonging to or held for the benefit of said partnership was approximately $910,000 and that the interest of defendant Mayer therein cannot exceed the value of $180,000 and in fact, by reason of the matters hereinabove set forth in paragraph 19, is very much less than that amount.

Wherefore the plaintiff prays

First. That the defendant Richard Mayer be ordered to disclose [fol. 9] the present value in cash of the assets of the partnership of Reis & Company within his possession or subject to his control.

Second. The defendants, partners resident in Germany, other than the special partner, be ordered to disclose the present cash value of the assets of said partnership within their possession or subject to their control.

Third That in the accounting to be ordered and decreed hereunder, the defendant Richard Mayer be ordered to charge himself with all losses of partnership assets occasioned by his diversion and conversion thereof to his own use, and his unauthorized investment thereof in stock or other securities, and with interest upon the amounts so lost and with all gains and accretions of income upon investments made by him with the money or property of said partnership, or taken by him from the assets of the partnership and by him treated as his own in advance of any partnership accounting.

Fourth. That the amount due the defendant Mayer from the partnership of Reis & Company be determined and established as of the date of the final decree hereunder, and that the defendants Richard Mayer, Richard Mayer Company and Anglo-Ameri-

can Cotton Company be thereupon ordered to pay over, transfer and deliver to the plaintiff the surplus which shall remain out of the assets of said partnership after the satisfaction of the amount due said defendant Mayer, if any upon a true and proper accounting.

Fifth. That in determining the amount due him from the partnership on accounting the defendant Richard Mayer be credited with the value of his interest in the European assets of said partnership.

Sixth. That process issue to all the parties named as defendants in the bill of complaint, that they answer the bill of complaint not under oath, answer under oath being hereby expressly waived, and that they be bound by the decree entered in this cause.

Seventh. That the plaintiff have such other and further relief [fol. 10] by reason of the matters set forth in the bill of complaint and such decrees and processes as this court deems proper.

Thomas W. Miller, Alien Property Custodian, by His Solicitors, Elias Field, Dean Hill Stanley, Special Assistants to the Attorney General.

Exhibit A to Bill of Complaint

Under the Firm name of Reis & Company with the main seat at Friedrichsfeld, branch at Heidelberg, there exists a partnership.

The object of same is the dealing in Cotton Waste, the manufacture of Wiping Waste and other relating articles.

Personally liable partners are Messrs. Edwin Reis, Heildelberg, Ludwig Reis, Heidelberg, Karl Bachert Strauss, Manchester. A special partner is Mrs. Wilhelm Reis, Widowed, Heidelberg, Mr. Richard Mayer of Boston, America enters the partnership per July 1st, 1913 as an additional personal liable partner.

For the specific (definite) regulation of their mutual relations the interested parties conclude the following

Partnership Agreement

Where in the following text mention is made of partners, only such partners are meant which are personally liable unless the special partner is expressly mentioned.

Paragraph 1

Each member devotes his full working power to the business. Mr. Richard Mayer takes his domicile in Boston. He is to conduct the American business of the partnership. He is upon request of the other partners to conduct individual or entire transactions for the account of the partnership either under his present own firm name, Richard Mayer, or under any other firm's name

that may be acquired for the Company. Upon decision of the partners his present firm, Richard Mayer, is to be dissolved.

Mr. Karl Bachert Strauss obligates himself as soon as conditions permit and not later than July 1st, 1914 to make his main- [fol. 11] stay at Heidelberg. But even before, according to the requirements of the business, will he alternately make his stay at Manchester and Heidelberg.

Paragraph 2

Each partner signs the partnership alone and represents same for external purposes. No partner is justified, without consent of the others, to become interested in any other enterprise excepting through capital investment. Any kind of participation, however, is inadmissable if that other enterprise serves the same purpose as the business of the firm of Reis & Company.

Paragraph 3

No partner is entitled, without the consent of the others, to take on any obligation of any third party in any form whatever, such as bonds, mortgages, guaranties, notes, endorsements, etc., be it either for the firm's or his own account.

Paragraph 4

No partner is allowed to undertake any transactions at a Bourse (stock exchange) be it in stocks, bonds or other commercial commodities either in the name of the Company or in his own name. A partner who violates this decision has to pay a penalty of Marks 5,000 to the other partners. If the transactions have resulted in a gain, then this penalty increases itself automatically to the amount of these gains. The other partners have also the right to claim restitution of any loss sustained that exceeds the amount of the penalty.

Paragraph 5

In case a member is opposed to a transaction belonging to the regular course of business, then the majority decides whether or not that transaction should be carried out. Each partner is required before he undertakes a transaction which does not belong to the regular course of business, to call for unanimous consent of the other partners. To be considered as such transactions are the purchase and sale of Real Estate, the taking on of mortgages, making loans to anyone, the erection of new buildings, the participation in other commerical enterprises other than through the acquisition of shares, the acquisition of any other business enterprise, the giv- [fol. 12] ing full power of attorney to anyone. If a member violates these obligations, then he can be called upon by the other partners to take over and carry out such transactions for his own account.

Paragraph 6

Mrs. Wilhelm Reis, widowed, has claim only to the interest on her investment at the rate of 4½%. She does not participate in gain or loss. Nevertheless, she is allowed to have her name continued to be used as special partner. She can, at any time, call for the cancellation of this agreement and ask for a transfer of her investment to creditor's account and have it treated as such.

Paragraph 7

As a basis for the property invested by Messrs. Edwin Reis, Ludwig Reis and Karl Bachert Strauss, the inventory of November, 1912 is binding. The share of Mr. Edwin Reis, according to that, amounts to Marks 1,179,845.03, Mr. Ludwig Reis, Marks 1,136,867.26, Karl Bachert Strauss, Marks 348,313.24. Messrs. Edwin Reis, Ludwig Reis and Karl Bachert Strauss guarantee to Mr. Richard Mayer the correctness of this inventory. They also guarantee the Accounts Receivable contained in that inventory within 1%.

Mr. Richard Mayer brings into the partnership his firm and business which he has conducted in Boston, with all its assets and liabilities. Binding is his inventory to be taken per July 1, 1913. In this inventory all merchandise is to be taken on at cost value and the Accounts Receivable at their actual values. Mr. Richard Mayer guarantees the correctness of this inventory. He also guarantees the Accounts Receivable within 1%. The other partners have a right to check up the inventory. In case the inventory does not reach the amount of Marks 200,000 then Mr. Richard Mayer has to make good the difference to bring it up to that minimum. In case Mr. Karl Bachert Strauss and Richard Mayer come into possession of larger amounts of money, be it either through inheritance, marriage or similar events, they are then obligated to invest this money in the partnership until their investment equals the smallest amount of the Messrs. Reis.

[fol. 13]

Paragraph 8

The fiscal year of the partnership runs from December 1st to November 30th. At the end of the year, inventory is to be taken every year. This does not require the consent of the special partner. In the inventory all merchandise on hand must be taken in at cost and in case the market value is lower than the cost, then market value is to govern. Manufactured articles are to be taken in at cost of production. Real Estate and Buildings must be written off 5% and the machinery 10%.

Paragraph 9

The investment capital of each partner, without consideration of the yearly result (gain or loss), bears interest at 4½ per cent.

The partners receive, without consideration of the yearly result, a fixed compensation (salary) namely: Mr. Edwin Reis 22,000 Marks, Mr. Ludwig Reis 22 000 Marks, Mr. Karl Bachert Strauss 20,000 Marks and Mr. Richard Mayer 16,000 Marks. Each partner, during the course of the year, is entitled to draw up to an amount equal to his compensation and the interest due him, combined.

Paragraph 10

The participation in gain and loss is as follows: Mr. Edwin Reis 27½%, Mr. Ludwig Reis 27½%, Mr. Karl Bachert Strauss 25% and Mr. Richard Mayer 20%. For the year December 1st, 1912 to November 30th, 1913, Mr. Richard Mayer participates to the extent of 6/12ths of his share at 20%. Shares of profit, as well as any amount not fully drawn for compensation (salary) and interest are to be credited to the capital (investment) account of the respective partner. The time of duration of the partnership is firmly fixed from July 1st, 1913, to November 30th, 1916. If there is no written notice given six months before expiration and if the partnership continues to exist, then an additional duration of two to two years, with the same arrangement about giving notice, still remains in force. The giving of notice is to be directed against the partnership. A copy of such notice is to be sent to the other partners. The timely arrival of the notice at the seat of the Company is suf- [fol. 14] ficient. In case of such notice taking place, the partnership is to be dissolved. In the absence of a further understanding or agreement, liquidation takes place. The partners are liquidators. Each one represents the firm in liquidation.

Paragraph 11

Giving notice on the part of the special partner does not dissolve the partnership. It only results in the justified demand by Mrs. Wilhelm Reis, widowed, for the payment of the money due her. This payment is to take place in two yearly installments, the first amount being due at the termination of the agreement.

Paragraph 12

In case dissolution of the partnership takes place within the first three years, from July 1st, 1913, in consequence of giving notice or for any other legal reason, then Mr. Richard Mayer is not entitled to any amount realized in the sale of the Real Estate, Buildings and Machinery which is in excess of the book values which were existing at the time of his entry into the partnership. New purchases and improvements must be taken into consideration.

Paragraph 13

In case a partner dies, then the surviving partners continue the partnership. The heirs of the deceased are eliminated with the

day of death. They have claim only to the payment of the capital invested by the deceased on the basis of the last inventory taken prior to the time of death. To this payment is to be added 4½% from beginning of last fiscal year to the day of death, also corresponding share of salary. The drawings of that period are to be deducted. The heirs do not participate in loss or gain which take place during the year of the death. This also takes place if the surviving partners decide to dissolve the partnership in consequence of the deceased's death. The above stipulated amount due to the deceased is to be paid to the heirs as follows: 20% within sixty days of the day of death, the remainder within the following two years in three equal installments, the first one to take place within eight months after the payment of the first 20% due. The money so due is to bear interest at 5%, which interest is to be added and [fol. 15] paid whenever a part payment comes due. The heirs of the deceased partner are not responsible to the other partners for the collection of Accounts Receivable which are contained in that particular inventory which concerns the heirs. Each heir of the deceased partner can demand the immediate payment of his balance due, if the partnership, after having failed to make payment when due, does not make settlement within one — after specific demand for the money has been made.

Paragraph 14

The death of the special partner has no influence upon the existence of the partnership. Her rights are absorbed by her heirs.

Paragraph 15

In so far as this agreement does not contain any specific conditions, then the provisions of the German Commercial and Civil Court laws are determining. As a specific seat of Law Court for the settlement of any differences Mannheim is agreed upon by all concerned.

Friedrichsfeld, May 24, 1913.

Edwin Reis, Karl Bachert Strauss, Ludwig Reis, Richard Mayer.

The correctness of the above copy with the original that was presented and handed back is hereby certified to.

Heidelberg, February 11th, 1919.

Grand Ducal Notary's Office II.

Becker. (Seal Grand Ducal Notary, Herman Becker.)

Seen for legalization of the above seal and signature of the Notary Becker of the Gr. Bad. Notariat II. at Heidelberg.

Francfort on the Main on the 21st day of February, 1919.

J. U. Sepere, Royal Spanish Consul. (Seal.)

Charged ad Interim with the protection of American interests. Consulado de Espana Francfort del Main No. 16. No fee.

[fol. 16] EXHIBIT B TO BILL OF COMPLAINT

APC Form No. 106-B. Report No. 21704

Short Demand for Money and Property. Trust No. W-19975-M. Original Alien Property Custodian

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made by the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrmuent or instruments as may be necessary or proper to evidence upon the records or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidence of indebtedness or obligation, of any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918

Sec. 1 (c). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' [fol. 17] and 'authority' of the enemy, as used herein, shall be deemed to mean respectively such right, title, interest, estate, power and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (a). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such right, title, interest, and estate in and to and possession of the enemy or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and other property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian."

To Anglo-American Cotton Company, (address) 200 Summer Street, Boston, Massachusetts:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act and by said executive [fol. 18] orders, after investigation do determine that Reis & Company (name of enemy) whose address is Heidelberg, Germany (last known address), is an (enemy) (not holding a license granted by the President), and has a certain right, title, and interest in all that certain money and property mentioned and particularly described in your report to the Alien Property Custodian, dated May 21st, 1918, as owing or belonging to, or held for, by, on account of, or on behalf of, or for the benefit of, the "person" hereinabove mentioned, together with all interest accrued thereon to date of payment to the Alien Property Custodian, and all dividends or accumulations thereon whatsoever now in your possession or which may hereafter come into your possession.

I, as Alien Property Custodian, do hereby require that the said money and property together with said dividends and/or accumulations shall be by you conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian, to be by me held, administered, and accounted for as provided by law.

The State Street Trust Company is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian the property herein mentioned, and upon the service of this demand on you by said depositary you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to the depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 28th day of May, 1918.
A Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director.

Service of the within demand accepted this 7th day of June, 1918.
Anglo-American Cotton Company. J. Laible, Treasurer.

Served the within notice and demand on the within-named Anglo-American Cotton Company, at 200 Summer Street, in the city of Boston, State of Massachusetts, this 7th day of June, 1918, by giving [fol. 19] correct copy thereof (In the case of an individual) (In the case of a partnership) (In the case of a corporation) to Julius Laible, a Treasurer of the corporation of whom said demand is made, at the office of said corporation.
State Street Trust Co. as Depositary for Alien Property Custodian.
D. M. Dutch, Secretary.

(Strike out the inapplicable clauses.) Trust W-19975-M.

APC Form No. 106-B. Report No. 21705

Short Demand for Money and Property. Trust No. W-19975-M.
Original. Alien Property Custodian

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7 (e). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of [fol. 20] enemy, deliver up any notes, bonds, or other evidences of

indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

Extracts from Executive Order of February 26, 1918

Sec. 1 (c). "The words 'right,' 'title,' 'interest,' 'estate,' 'power,' and 'authority' of the enemy as used herein, shall be deemed to mean respectively such right, title, interest, estate, power, and authority of the enemy as may actually exist and also such as might or would exist if the existing state of war had not occurred, and shall be deemed to include respectively the right, title, interest, estate, power and authority in law or equity or otherwise of any representative of or trustee for the enemy or other person claiming under or in the right of, or for the benefit of, the enemy."

Sec. 2 (a). "A demand for the conveyance, transfer, assignment, delivery, and payment of money or other property, unless expressly qualified or limited, shall be deemed to include every right, title, interest, and estate of the enemy in and to the money or other property demanded as well as every power and authority of the enemy thereover."

Sec. 2 (c). "When demand shall be made and notice thereof given, as hereinbefore provided, such demand and notice shall forthwith vest in the Alien Property Custodian such, title, interest, and estate in and to and possession of the money or other property demanded and such power or authority thereover as may be included within the demand, and the Alien Property Custodian may thereupon proceed to administer such money and property in accordance with the provisions of the 'Trading with the enemy Act' and with any orders, rules, or regulations heretofore, hereby, or hereafter made by me or heretofore or hereafter made by the Alien Property Custodian.

[fol. 21] To Richard Mayer Company, (address) 200 Summer St., Boston, Massachusetts:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act and by said executive orders, after investigation to determine that Reis & Company (name of enemy), whose address is Heidelberg, Germany (last known address), is an enemy (not holding a license granted by the President), and has a certain right, title, and interest in all that certain money and property mentioned and particularly described in your report to the Alien Property Custodian, dated May 21st, 1918, as owing or belonging to, or held for, by, on account of, or on behalf of, or for

the benefit of, the "person" hereinabove mentioned, together with all interest accrued thereon to date of payment to the Alien Property Custodian, and all dividends or accumulations thereon whatsoever now in your possession or which may hereafter come into your possession.

I, as Alien Property Custodian, do hereby require that the said money and property together with said dividends and/or accumulations shall be by you conveyed, transferred, assigned, delivered, and paid over to me, as Alien Property Custodian, to be by me held, administered and accounted for as provided by law.

The State Street Trust Company is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian the property herein mentioned, and upon the service of this demand on you by said depositary you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to the depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 28th day of Maay, 1918.

A. Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director.

[fol. 22] Service of the within demand accepted this seventh day of June, 1918.

Richard Mayer Company, by Richard Mayer, Treasurer.

Served the within notice and demand on the within named Richard Mayer Company, at 200 Summer Street, in the city of Boston, State of Massachusetts, this 7th day of June, 1918, by giving a true and correct copy thereof (In the case of an individual) (In the case of a partnership) (In the case of a corporation) to Richard Mayer, a Treasurer of the corporation of whom said demand is made, at the office of said corporation.

State Street Trust Co. as Depositary for Alien Property Custodian.
D. M. Dutch.

(Strike out the inapplicable clauses.) Trust No. 19975.

A. P. C. Form No. 106. Report No. 21703

Trust No. F-19975-CB. Original. Alien Property Custodian

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the Presi- [fol. 23] dent may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy, or ally of enemy, creditor, or obligee."

To Mr. Richard Mayer, (address) 200 Summer Street, Boston, Mass.:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and said executive orders, after investigation do determine that the following property to wit:

The sum of Two Thousand One Hundred Fifty-five Dollars and Sixty-one Cents ($2,155.61) with accrued interest to date of payment to the Alien Property Custodian.

Also £37 4s. 1d. on deposit with Smith, Coney & Barret, Liverpool, England;

Also the following bonds, stocks and securities:

$1,000.00	City of Cambridge Coupons, 4½s, 1921		#17031
9,000.00	do.	do. 1922	17032/40
5,000.00	do.	do. 1923	17041/45
5,000.00	do.	do. 1924	17051/55
5,000.00	do.	do. 1926	1755/60
5,000.00	do.	do. 1927	17145
			17147/50
15,000.00	State of Mass. Coupons, 3½s, 1948.....		685/93
		.....	698
		.....	704/08
10,000.00	Chicopee Coupons, 4½s, 1930.....		301/310
25,000.00	Federal Land Bank, 4½s, 1937.....		1251/75
[fol. 24]			
3,000.00	Atlantic & Charlotte 5's, 1944.....		#M 11333/35

10,000.00	Cons. Gas El. Lt. & Power Co. 4½s, 1935	13533/42
19,000.00	Great Western Power Co. 5's, 1946....	#5009
	....	5645/46
	....	6337
	....	15202
	....	15202
	....	18147
	....	18160
	....	18164
	....	12683
	....	19399
3,000.00	Atlantic & Charlotte 5's, 1944.....	#M 11333/35
7,000.00	St. Louis & San Francisco 5's 1950....	
1,000.00	General Electric Co. 6's, 1920.....	1814
112,000.00	Liberty Loan 3½'s, 1947.....	12/1000
	.....	#845639/50
	.....	100/1000
	.....	845501/50
	.....	845551/600
50,000.00	do. (2nd of 1917) 4's.....	50/1000
	.....	#607843/92

50,000.00 par value Canadian Gasoline Corp. Ltd. (50,000 shares) present value unknown.

15,000.00 par value Canadian Gasoline Corp. Ltd. (15,000 shares) present value unknown.

5,000.00 par value (1,000 shares) common stock Gasoline Corp. present value unknown.

5,000.00 par value 7% preferred stock Simmons Company present value unknown.

5,000.00 par value (1,000 shares) common stock Gasoline Corp. present value unknown.

285,000.00 par value (285,000) shares Canadian Gasoline Corp. Ltd. present value unknown, supported by notes from Guy Murchie, original liability from Walter Whetstone to the amount of $30,000.00 which Mr. Murchie took up,

together with any dividends or interest heretofore or hereafter received by you on account of the above securities with interest on said dividends and coupon payments, if any, to date of settlement with the Alien Property Custodian.

[fol. 25] Also demand note for the sum of One Thousand Dollars ($1,000) on the Flexner-Taylor Co., Boston, Mass.;

Also note for Four Hundred Dollars ($400) on Mrs. Sarah H. Welch, due September 15, 1918;

Also note for One Hundred Twenty-five Dollars ($125) on Consolidated Construction Co., due June 15, 1918, Boston, Mass.,

Together with any payments *or* principal or interest on any of the aforesaid notes to date of settlement with the Alien Property Custodian.

J. L. Davis.

is by you owing and belonging to and held for, by, on account of, and on behalf of, and for the benefit of Reis & Company, a co-partnership. Address: Heidelburg, Germany, whom after investigation I do determine to be an (enemy) not holding a license granted by the President, and I hereby require that the said money and property shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian to be by me held, administered, and accounted for as provided by law.

The State Street Trust Co., is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 20th day of September, 1918.

A. Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director. (Seal.)

Service of the within demand accepted this 27th day of September, 1918, under protest. Richard Mayer.

Served the within notice and demand on the within-named Richard Mayer at 200 Summer Street in the City of Boston, State of Mass., [fol. 26] this 27th day of September, 1918, by giving a true and correct copy thereof (in the case of an individual) to the person of whom said demand is made.

(In the case of a partnership.)

State Street Trust Co. as depositary for Alien Property Custodian.
D. M. Dutch, Secretary.

(Strike out the inapplicable clauses.) Trust F-19975 CB.

A. P. C. Form No. 106. Report No. 21703

Trust No. F-19975-CB. Original. Alien Property Custodian

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7 (c). "If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or property to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property [fol. 27] custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

To Lee Higginson & Company—Address, Boston, Mass.:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and said executive orders, after investigation do determine that the following property, to wit: the following property or securities deposited with you by Richard Mayer, 200 Summer Street, Boston, Massachusetts:

$1,000.00	City of Cambridge Coupons 4½s, 1921.....	#17031
9,000.00	do. do. 1922.....	17032/40
5,000.00	do. do. 1923.....	17041/45
5,000.00	do. do. 1924.....	17051/55
5,000.00	do. do. 1926.....	17056/60
5,000.00	do. do. 1927.....	#17145
		17147/50
15,000.00	State of Mass. Coupons, 3½s, 1948.....	685/93
		698
		704/08
10,000.00	Chicopee Coupons, 4½s, 1930.....	301/310
25,000.00	Federal Land Bank 4½s, 1937.....	1251/75
5,000.00	Public Service of No. Ill. 5's, 1956.....	12457/61
1,000.00	Cons. Gas El. L. & Power Co. 4½s, 1935.....	13533/42
1,000.00	Great Western Power Co. 5's 1946.....	#5009
		5645/46
		6337
		15202
		18147
		18160
		18164
		12683
		19399

3,000.00 Atlanta & Charlotte 5's, 1944, #M.....	11333/35
[fol. 28] 7,000.00 St. Louis & San Francisco 5's, 1950..	.....
1,000.00 Central Electric Co. 6's 1920.....	1814

Together with interest heretofore or hereafter received by you on any of the said securities and any interest accrued on said interest to date of settlement with the Alien Property Custodian is by you owing and belonging to and held for, by, on account of, and on behalf of, and for the benefit of Reis & Company, a co-partnership, (address:) Heidelburg, Germany, whom after investigation I do determine to be an (enemy) not holding a license granted by the President, and I hereby require that the said money and property shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian to be by me held, administered, and accounted for as provided by law.

The State Street Trust Co. is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary, you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 20th day of September, 1918.

A. Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director. (Seal.)

Service of the within demand accepted this 23d day of September, 1918.

Lee, Higginson Co., by David Shaw, Partner.

Served the within notice and demand on the within-named Lee Higginson & Co., at 44 State Street in the City of Boston, State of Mass., this 23rd day of September, 1918, by giving a true and correct copy thereof (In the case of an individual.) (In the case of a part-
[fol. 29] nership.) to David Shaw, a member of the partnership of whom said demand is made, (In the case of a corporation) State Street Trust Co. as depositary for Alien Property Custodian.

D. M. Dutch (Secretary).

(Strike out the inapplicable clauses.) Trust No. F-19975 CB.

A. P. C. Form No. 106. Report No. 21073

Trust No. F-19975-CB. Original. Alien Property Custodian.

Demand by Alien Property Custodian for Property

Extracts from "Trading with the Enemy Act"

Sec. 7. (c) "If the President shall so require, any money or other property owing or belonging to or held for, by, on account

of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian."

Sec. 7 (e). "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

"Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebted- [fol. 30] ness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee."

To the First National Bank (address) Boston, Mass.:

I, A. Mitchell Palmer, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress known as the "Trading with the enemy Act," approved October 6, 1917, and the executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, and said executive orders, after investigation do determine that the following property, to wit:

The following property or securities, deposited with you or now deposited in Safe Deposit Box No. 3722 of your safe deposit vaults by Richard Mayer of 200 Summer Street, Boston, Mass.:

The Sum of Two Thousand One Hundred Fifty Five Dollars and Sixty one cents ($2,155.61), together with any interest thereon to date of payment to the Alien Property Custodian;

Liberty Bonds of the face value of One Hundred Sixty Two Thousand Dollars ($162,000);

Stocks

$50,000.00, par value, Canadian Gasoline Corp, Ltd. (50,000 shares), present value unknown.

15,000.00, par value, Canadian Gasoline Corp. Ltd. (15,000 shares), present value unknown.

5,000.00, par value (1,000 shares), common stock Gasoline Corp., present value unknown.

5,000.00, par value (1,000 shares), preferred stock Gasoline Corp., present value unknown.

5,000.00, par value, 7% preferred stock Simmons Company, present value unknown.

285,000.00, par value (285,000), shares Canadian Gasoline Corp., Ltd., present value unknown, supported by notes from Guy Murchie, original liability from Walter Whetstone to the amount of $30,000.00 which Mr. Murchie took up,

[fol. 31]

together with any interest or dividends heretofore or hereafter received by you on the above securities and any interest accrued on said interest or dividend payments to date of settlement with the Alien Property Custodian, is by you owing and belonging to and held for, by, on account of, and on behalf of, and for the benefit of Reis & Company, a co-partnership, (address) Heidelburg Germany, whom after investigation I do determine to be an enemy (ally of enemy) not holding a license granted by the President, and I hereby require that the said money and property shall be by you conveyed, transferred, assigned, delivered, and paid over to me as Alien Property Custodian to be by me held, administered, and accounted for as provided by law.

The State Street Trust Co. is hereby designated as depositary, and is authorized to receive for and on behalf of the Alien Property Custodian, the property herein mentioned, and upon the service of this demand on you by said depositary, you are directed to deliver the said property to it forthwith. For money demanded, checks may be delivered to Depositary, which in all cases should be made payable to the Alien Property Custodian.

Witness my hand and seal of office, this 20th day of September, 1918.

A. Mitchell Palmer, Alien Property Custodian, by J. L. Davis, Managing Director. (Seal.)

Service of the within demand accepted this 23rd day of September, 1918.

The First National Bank of Boston, by F. A. Goodhue, V. Pt.

Served the within notice and demand on the within-named The First National Bank at 70 Federal Street in the City of Boston, State of Mass., this 23rd day of September, 1918, by giving a true and correct copy thereof (In the case of an individual.) (In case of a [fol. 32] partnership.) (In the case of a corporation.) to F. A. Goodhue, a Vice President of the corporation of whom said demand is made, at the office of said corporation.

State Street Trust Co. as depositary for Alien Property Custodian.

D. M. Dutch, Secretary.

(Strike out the inapplicable clauses.) Trust No. F-19975-CB.

Trust No. 19975. Report No. 21705

Demand by Alien Property Custodian

To Richard Mayer Company, (address) 200 Summer Street, Boston, Mass.:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the act of Congress known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said Act, said proclamations and executive orders, after investigation do determine that those certain shares of your capital stock heretofore registered and standing upon your books in the name of the persons listed in Column No. 1 of the schedule marked "Exhibit A" attached hereto and made a part hereof (said schedule being identified by the signature (Signed) Herman J. Galloway, on the margin thereof), and evidence or represented by a certificate or certificates numbered as specified in Column No. 2 of said schedule on the same line with the name of the person in whose name said stock is registered or stands, of the number and class of shares listed in Column No. 3 of said schedule on the same line as aforesaid, belong to and are by you held for, on account of, on behalf of, or for the benefit of the person or persons listed on the same line therewith in Column No. 4 of said schedule.

I do further, after investigation, determine that said persons whose names are listed in said Column No. 4 and whose addresses are given [fol. 33] in Column No. 5 on the same line therewith, are enemies and each of them is an enemy not holding a license granted by the President, within the purview of said acts as amended and said proclamations and executive orders issued in pursuance thereof.

[illegible] such Alien Property Custodian and by virtue of the authority vested in me, I do hereby seize said shares of stock and each and all of them, and do require that the same be by you transferred, assigned, and delivered to me; and I do hereby expressly ratify and confirm the issuing heretofore of certificates of stock in the name of the Alien Property Custodian, or otherwise as the Alien Property Custodian has heretofore requested and directed, which certificates of stock are now held by or for me.

You are required to note forthwith the substance of this demand upon your stock books or records, but until otherwise directed, you are not required to issue other or additional certificates representing said shares of stock. This demand is supplementary to any demands which may have been heretofore made upon you with respect to the said shares of certificates, and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

Witness my hand and seal of office this 12th day of May, 1919.
Francis P. Garvan, Alien Property Custodian. (Seal.)

O. K. H. J. G.

Approved: Brenton K. Fisk.

Exhibit A

Attached to demand issued by the Alien Property Custodian, dated the 12th day of May, 1919, and identified by the following signature.
(Signed) Herman J. Galloway.

1 Name of person in whose name shares of stock or other beneficial interests stand or stood	2 Certificate No.	3 Number and kind of shares		
		Common	1st preferred	2d preferred
Richard Mayer	7	1	.....	.....
Richard Mayer	9	495	.....	.....
[fol. 34] Richard Mayer	10	500	.....	.....
Richard Mayer	11	1,000	.....	.....
J. L. Flatau	12	1	.....	.....
Richard Mayer	13	1	.....	.....
Richard Mayer	16	1	.....	.....
Charles E. Hicks	18	1	.....	.....

4 Name of enemy for, on account of, or on behalf of whom shares of stock or other beneficial interests are or were held	5 Address	6 Name to whom new certificate to be issued
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....
Reis & Company	Heidelberg, Germany	.....

Boston, May 17, 1919.

Service of the within demand is hereby accepted.
Richard Mayer Company, by James C. Howe, President.

Trust No. 19975. Report No. 21704

Demand by Alien Property Custodian

To Anglo-American Cotton Company, (address) 200 Summer Street, Boston, Massachusetts:

I, Francis P. Garvan, Alien Property Custodian, duly appointed, qualified, and acting under the provisions of the Act of Congress

known as the "Trading with the Enemy Act," approved October 6, 1917, and the amendments thereto, and the proclamations and executive orders issued in pursuance thereof, by virtue of the authority vested in me by said act, said proclamation and executive orders, after investigation do determine that those certain shares of your [fol. 35] capital stock heretofore registered and standing upon your books in the name of the persons listed in Column No. 1 of the schedule marked "Exhibit A" attached hereto and made a part hereof (said schedule being identified by the signature (Signed) Herman J. Galloway on the margin thereof), and evidenced or represented by a certificate or certificates numbered as specified in Column No. 2 of said schedule on the same line with the name of the person in whose name said stock is registered or stands, of the number and class of shares listed in Column No. 3 of said schedule on the same line as aforesaid, belong to and are by you held for, on account of, on behalf of, or for the benefit of the person or persons listed on the same line therewith in Column No. 4 of said schedule.

I do further, after investigation, determine that said persons whose names are listed in said Column No. 4 and whose addresses are given in Column No. 5 on the same line therewith, are enemies and each of them is an enemy not holding a license granted by the President, within the purview of said Act as amended and said proclamations and executive orders issued in pursuance thereof.

As such Alien Property Custodian, and by virtue of the authority vested in me, I do hereby seize said shares of stock and each and all of them, and do require that the same be by you transferred, assigned, and delivered to me; and I do hereby expressly ratify and confirm the issuing heretofore of certificates or stock in the name of the Alien Property Custodian, or otherwise as the Alien Property Custodian has heretofore requested and directed, which certificates of stock are now held by or for me.

You are required to note forthwith the substance of this demand upon your stock books or records, but until otherwise directed, you are not required to issue other or additional certificates representing said shares of stock. This demand is supplementary to any demands which may have been heretofore made upon you with respect to the said shares or certificates, and shall not prejudice or affect any such demands or any rights acquired by virtue thereof.

[fol. 36] Witness my hand and seal of office this 12th day of May, 1919.

Francis P. Garvan, Alien Property Custodian. (Seal.)

O. K. HJG.

Approved. Burton K. Fisk.

This cause was thence continued to the September Term, A. D. 1922, when, to wit, September 18, 1922, the following Answer of Richard Mayer et al. was filed:

In United States District Court

Answer of Richard Mayer et al.—Filed September 18, 1922

These defendants, for answer to the bill of complaint in the above-entitled case, say as follows:

[Memorandum.—The first paragraph was subsequently stricken out by order of the court upon motion of the plaintiff and does not bear on the errors assigned. James S. Allen, Clerk.]

Second. On or about June 15, 1922, said Richard Mayer made and said Alien Property Custodian received a full and true accounting in the premises and a copy thereof as so made and received is hereto annexed marked "A" and made a part hereof and there was and is no surplus to be paid or delivered to said Alien Property Custodian; and said Richard Mayer hereby affirms and repeats said accounting as a true and full accounting.

Third. For further answer to the several paragraphs of the bill of complaint, these defendants say that the allegations thereof, each and all of them, are immaterial, and also say as follows: 1. Admitted. 2 Admitted except that the partnership had also a principal seat and principal books of account at Boston. 3. Admitted. 4 and 5. Admitted except that said corporations were not agencies or instrumentalities as alleged and their capital stock and assets are not equitably the property of said partnership but are the property of Richard Mayer. 6. Admitted. 7. Admitted. 8. Denied. Said property was all property of Richard Mayer. 9. Admitted. 10. Ad-[fol. 37] mitted. 11. Admitted. Said quotations are a part only of said decree. 12. Admitted except that defendants deny that said administration was according to law and refer to the decision in said case. 13. Admitted for the purposes of this case only. 14. Denied as the contrary is res adjudicata as adjudged in said case. 15. Denied. 16. Denied. 17. Denied. 18. Denied. 19. Denied. 20. Denied. 21. Denied. 22. Denied. 23. Denied. 24. Denied. 25. Denied.

Wherefore these defendants say that the bill of complaint should be dismissed with costs to these defendants.

By Their Attorneys, Dunbar, Nutter & McClennen, Edward F. McClennen.

Exhibit A to Answer of Richard Mayer et al.

Accounting by Richard Mayer to the Alien Property Custodian

June 7, 1922.

To the Alien Property Custodian:

Pursuant to the decree of the District Court of the United States for the District of Massachusetts entered on February 1, 1921 in the

case of Richard Mayer v. Francis P. Garvan, Alien Property Custodian, et al., No. 925 in Equity, as affirmed with modifications by the decree of the Circuit Court of Appeals for the First Circuit on January 17, 1922, I, the said Richard Mayer, account as hereinafter set out.

In rendering this account I expressly rely and insist upon the instrument dated February 7, 1917 set out as Exhibit D of the substituted bill of complaint in the above described case and appearing on pages 23 and 24 of the printed record in the Circuit Court of Appeals, and the taking over of the European assets as their own by Edwin Reis, Ludwig Reis and Karl B. Strauss, as disentitling said former partners in the firm of Reis & Company, and the Alien Property Custodian claiming their interest to this or to any account of the American assets. I do not hereby or by anything heretofore or hereafter done, waive this, but on the contrary, expressly insist thereon.

[fol. 38] This partnership was dissolved by the outbreak of war on April 6, 1917. For convenience, I take for the accounting date instead of April 6, 1917, April 1, 1917. I know of no substantial change during the five days involved, and the accounts have been made up to April 1, 1917 in the books of the several parties.

On April 1, 1917 there were, as far as I know, no assets of the firm of Reis & Company, unless it be the following items:

1. The European assets,
2. The stock of the Richard Mayer Company,
3. The Richard Mayer Export Department so called,
4. The stock of the Anglo-American Cotton Company.

The best and most detailed information which I have concerning the European assets is in the report of Price, Waterhouse, Peat & Company, printed in the record in the Circuit Court of Appeals in the above described case at pages 113 to 153. From this it appears (p. 145) that the assets with their valuation in marks December 31, 1916, were as follows:

Land and Buildings	520,502.94
Plant and Machinery	328,013.55
Furniture and Fittings	339.02
Tools and Utensils	3,376.24
Merchandise	1,537,257.72
Debtors, less Reserve	2,145,961.50
Investments	5,004,028.32
Bills of Exchange	382.08
Cash and Bank Balances	5,742,309.18
	15,282,170.55

The actual value of these various assets and the sum for which they could have been liquidated had they been sold instead of being taken over as their own by Messrs. Reis, Reis and Strauss, I

haven't the means of giving. The books had been kept in marks. All transactions between us had always been based on the equivalent of 4.20 marks to the dollar. The accounts do not include anything for the very valuable good will of Reis & Company or for the salvage in the reserves which, as appears on page 146, were very [fol. 39] large. In this accounting I am certainly entitled to treat these assets as having the value at which they were stated on the books and at the rate of equivalents practiced between us.

It will be observed that no question of commerical rate of exchange is involved, and that these marks are not to be deemed to be paper marks as distinct from gold marks. It was not a question of remitting these assets to the United States in dollars. It was a question of determining inter-former-partners as to their value.

My interest according to this report (p. 138) in the European assets on April 1, 1917 was $511,855.46, which was somewhat less than 20% of the total capital and undivided profits (pp. 137, 138).

On April 1, 1917 the capital stock of the Richard Mayer Company.—2,000 shares of a par value of $200,000—had a book value of $429,661. On May 31, 1918, when this stock was seized by the Alien Property Custodian, it had a book value of $447,640.36. On March 31, 1922 it had a book value of $464,677.06. This was substantially all in cash, Liberty Loans, and United States Certificates of Indebtedness.

The Richard Mayer Export Department on Apri l, 1917 had the following assets:

Cash in Commonwealth Trust Company in name of Richard Mayer Company Exp.	$18,325.31
Cash First National Bank in name of Richard Mayer	152,529.25
Sundry securities bought by Richard Mayer and held for his account by Lee, Higginson & Co., of a par value of $210,000	208,647.97
City of Lowell note, par $100,000., held by Richard Mayer, in his safe deposit vault	97,044.44
Due from Smith, Coney & Barrett, approx.	2,000.00
Total	$478,546.97

[fol. 40] This Department owed

To Richard Mayer Co.	$100,000.00	
To Lee, Higginson & Co.	7,013.05	
		107,013.05
Leaving a net balance of		$371,533.92

It will be observed that there was nothing to be liquidated in this Department. The assets were either in cash or in securities which I had bought and not current business assets of Reis & Company.

On September 20, 1918, when seized by the Alien Property Custodian, the assets of this Department either remained as they were or had been changed into other securities which I had bought for my own account. As set out in the final decree at pages 59 and 60 of the printed record in the Circuit Court of Appeals, these had all passed into the form of cash and subsequently into the form of securities bought by me, for myself, as follows:

$5,000	St. Louis and San Francisco Railway Company.	
10,000	Consolidated Gas and Electric Power Company.	
5,000	Public Service of Northern Illinois.	
2,000	St. Louis and San Francisco Railway Company.	
3,000	Atlanta and Charlotte Air Line.	
10,000	Great Western Power Company.	
	(All the above bought before April 6th, 1917.)	
15,000	State of Massachusetts.	
10,000	City of Chicopee.	
30,000	City of Cambridge.	
1,000	General Electric.	
25,000	Federal Land Bank.	
———	(Total cost of all the foregoing, $114,491.52)	$114,491.52
12,000	First Liberty Loan 3½'s.	
100,000	First Liberty Loan 3½'s.	
50,000	Second Liberty Loan 4's.	
———	(Total of the foregoing, $162,000)	162,000.00

[fol. 41]

50,000	Shs. Canadian Gasoline Corp., Ltd.	
5,000	Shs. Gasoline Corp., Pfd.	
5,000	Shs. Gasoline Corp., Com.	
———	(Total cost of the foregoing $45,000)	45,000.00
3	Promissory Notes secured by $285,000. Canadian Gasoline Corp., Ltd. and 15,000 Shs. Canadian Gasoline Corp., Ltd.	
	(Total cost of the foreging $30,000	30,000.00
	Note Flexner-Taylor & Company	1,000.00
	Note Sarah H. Welch	400.00
	Note Consolidated Construction Company	125.00
	Note Sarah H. Welch	250.00
	(All the foregoing bought after April 6, 1917 by me for my own account.)	
	Cash in bank	2,155.61

The stock of the Anglo-American Cotton Company (500 shares of a par value of $50,000) on April 1, 1917 had a book value of

$108,819.15. On June 1, 1918, when it had been seized by the Alien Property Custodian, it had a book value of $113,977.17. At the present time it has no book value, but, on the contrary, a deficit slightly in excess of its entire capital stock.

All of these American assets on April 1, 1917 already stood in my name, except the stock in the Anglo-American Cotton Company which stood in the name of Julius Laible, Manager of that Company.

From this it appears that on April 6, 1917 or thereafter, before the seizure by the Alien Property Custodian, I had reduced the assets into my own name and possession, of a valuation April 6, 1917, as folows:

Export Department	$371,533.92
Stock in Richard Mayer Company	429,661.00
Total	$810,194.92
In addition, there was in America in the name of Julius Laible, the stock in the Anglo-American Cotton Company	108,819.15
Total	$910,014.07
[fol. 42] From this sum there is to be deducted a percentage of profits due to Julius Laible, which has since been determined to be $25,664.66 principal, and $1,511.22 interest to April 6, 1917, a total sum of $27,175.88 allowed and paid to Laible by the Alien Property Custodian	27,175.88
	$882,838.19

It is not clear to me whether or not my interest in the European assets as reported by Price, Waterhouse, Peat & Company includes my original capital contribution to the firm which was made in American assets, namely, 200,000 marks and 5,000 marks, —the equivalent of $48,809.52. For the purposes of this accounting, I am assuming that this is included in the European item and, therefore, should not be retained out of the American item also. If I am wrong in this assumption, the account as hereinafter stated should be changed accordingly, in my favor. Disregarding this possible item, we have my interest of 20% of $882,838.19, just stated, or $176,567.64. Adding this to my interest in the European assets of $511,855.46, gives $688,423.10. This amount at least I was entitled to have and retain as my own out of the American assets on the dissolution of the partnership by the outbreak of the war on April 6, 1917.

In proper accounting I am not made whole unless interest is added to the $688,423.10 from this date. If it is acknowledged, as I believe the fact to be, that the property is to be treated as having been taken over by me as my own on the outbreak of war, then the rate

of interest from the outbreak of war up to the time at which I was deprived of the property by the Alien Property Custodian, should be computed at the rate which the property actually earned. If, on the other hand, the property is to be treated as remaining in the hands of the dissolved partnership, the rate should be the legal one of six per cent. From the time that I was deprived of the property by the Alien Property Custodian, the interest should be computed at the rate of six per cent. This seems to me to follow from the decision of the Court that the taking from me was wrong. [fol. 43] It is not necessary to intimate that there was any personal liability on the part of the Alien Property Custodian in making the seizure. Whether there was or not, he took what by the decree of the Court I was entitled to retain. I would not be made whole by receiving merely the income that the property earned while it was wrongfully in the possession of the Alien Property Custodian. It might have earned much more in my hands. Whoever is to benefit by the accounting by me to the Alien Property Custodian should stand the consequences of the seizure by the Alien Property Custodian rather than I should do so.

Six per cent. on $688,423.10 is:

For one day	$114.74
For one month	3,442.12
For one year	41,305.39
For five years	206,526.93

If five years' interest from April 6, 1917 to April 6, 1922 be added to $688,423.10, it gives the sum of $894,950.03 as of April 6, 1922. To this sum is to be added interest to the date of the receipt back by me of the property from the Alien Property Custodian, as my own. If on its receipt back by me it is not to be treated as my own but as assets to be again liquidated before I can satisfy my claim, then interest should continue to run thereafter. I believe that such should not be the case, but that on the contrary, a reconversion into money is not necessary.

In order to obtain the return of this property from the Alien Property Custodian I made application in due course for a return without any order of the Court. The decree of the Court shows that the property should not have been taken from me, and, therefore, should have been returned without the necessity of court proceedings; it was not returned, I have been obliged to take the Court proceedings which have resulted in the decree. This has made it necessary for me to incur, for counsel fees and otherwise, very heavy expenses the amount of which has not been determined, and the whole amount of which cannot be determined until the matter of this ac- [fol. 44] counting has been completed to the point where further services and expenditures are unnecessary. The amount of these expenses seem to me a proper subject for allowance to me in the accounting. I think that if there were any surplus I should be entitled to pay these expenses out of that surplus.

A bond in the sum of $400,000 with a satisfactory surety, has been

required by the Alien Property Custodian, solely for the purpose of giving that assurance that any surplus would be paid over to him. This step has not been for the benefit of myself in any way, but only for the benefit of the surplus. Therefore, the cost of this bond should be met from the surplus.

This gives the following items of charge:

My interest on April 6, 1917	$688,423.10
Interest to June 7, 1922	213,525.90
Unpaid bills of Francis P. Garland	700.00
Expense of bond	4,000.00
State Street Trust Company commission paid June 7, 1922 by me	255.88
Interest on $18,429.87 from June 7, 1922 to date of its coming payment	Unascertained
Expense of securing return of property to me	Unascertained
Incomplete Total	$906,904.88

Against this I have to report concerning the property returned to me as follows:

On June 7, 1922 I received at the State Street Trust Company in Boston the following:

Sundry bonds listed on page 5 hereof as costing $114,491.52 less one bond of the City of Cambridge for $1,000, and one bond of the General Electric Company for $1,000, and having a market value on return to me of about $101,000 and credited here at cost	$112,491.52
First Liberty Loan 3½'s	93,000.00
Second Liberty Loan Converted 4¼'s	50,000.00
[fol. 45] Shares of stock of the Canadian Gasoline Corporation, Ltd. and Gasoline Corporation as listed on page 5 hereof, of doubtful value but credited back at cost	45,000.00
Three promissory notes for $30,000 in the aggregate which, with accumulating interest at five per cent from April 1, 1918 to June 7, 1922, are credited at	36,275.00
Note of Flexner-Taylor Company (less $100 paid on principal)	900.00
Note of Sarah H. Welch	400.00
Note of Consolidated Construction Company	125.00
Note of Sarah H. Welch	250.00
Check of State Street Trust Company for recently collected income	1,862.75
Draft not yet received but said to be in course to reach me	18,429.87
500 shares stock in Anglo-American Cotton Company, having no assets and having liabilities	—0—

2,000 shares of the capital stock of the Richard Mayer Co. assumed to have no liabilities and having a net worth according to the trial balance of May 31, 1922 rectified by increasing the total of cash in bank and petty cash by $1,282.39 June 7, 1922..... 469,338.58

$828,072.72

It is apparent from the foregoing that not only is there no surplus after the satisfaction of my interest, but that on the contrary there is a substantial deficit. The foregoing is made as a full and proper accounting to the President of the United States or his appointee, the Alien Property Custodian, and constitutes a full compliance with the condition of the bond given by me to the Alien Property Custodian dated June 7, 1922 with the United States Fidelity and Guaranty Company as surety in the sum of $400,000.

[fol. 46] Accordingly, you are hereby requested to acknowledge satisfaction of the condition of this bond, so that the same may be discharged.

In making this accounting I have resolved doubts to my own disfavor. If the account is not acceptable as a whole to you, I reserve the right to change any and all items therein which I may have the right to state differently.

Respectfully submitted, Richard Mayer.

[On back:] A. P. C. Bureau of law. Received Jun. 16, 1922. Referred to —— ——. Answered —— —, ——. Date: —— —, ——. No. —. Alien Property Custodian. Received Jun. 15, 1922. Noted: Date, —— —, ——. Ans'd: Date, —— —, ——.

At the same term to wit, November 20, 1922, the following Answer of Edwin Reis et al. was filed:

IN UNITED STATES DISTRICT COURT

ANSWER OF EDWIN REIS, KARL B. STRAUSS, ESTATE OF LUDWIG REIS, AND ANNY REIS—Filed November 20, 1922

Edwin Reis, Karl B. Strauss, Estate of Ludwig Reis and Anny Reis for answer to the bill of complaint in the above entitled case say as follows:

First. They admit the allegations contained in paragraphs marked and numbered 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 14, 16, 17, 18, 19, 20, 21, 23, 25 of the bill of complaint.

Second. With regard to the paragraph marked and numbered 3 of the bill of complaint, the defendants make answer as follows:

That Anny Reis is not and was at no time a special partner of the co-partnership of Reis & Company, but that the said Anny Reis in-

dividually and as trustee for her minor children is entitled to the [fol. 47] distributive share of Ludwig Reis in the assets of Reis & Company due and payable to him or to his estate upon an accounting and distribution of the assets and property of the firm of Reis & Company.

That the said Ludwig Reis was a "general or personally liable partner" of said firm or co-partnership of Reis & Company, and that he died on the tenth day of January, 1918, without having received any part or portion of his share or interest in the co-partnership of Reis & Company, there having been no accounting or distribution of the assets of the co-partnership prior to his death.

That the said Anny Reis, the widow of the deceased, individually and as trustee for her minor children, Aneliese and Ruth F. Reis, being the sole surviving heirs and next of kin are entitled under German law to all the right, title and interest of the said Ludwig Reis in and to the assets and property of said co-partnership of Reis & Company, as appears by the inheritance certificate hereto annexed and marked "Defendant's Exhibit I."

That the only special partner of the co-partnership of Reis & Company mentioned in the articles of co-partnership was one Mrs. Wilhelmine Reis who died during the summer of the year 1915, and whose share or interest in the firm at the time of her death amounted to the sum of M 250,000.00, which was distributed amongst her heirs or beneficiaries in accordance with German law as follows:

Aug. 31, 1915—Dr. Cahen	M 35,714.29
Aug. 31, 1915—Dr. Simon	35,714.29
Sept. 2, 1915—Dr. Felsenthal	35,714.29
Sept. 8, 1915—Ludwig Reis	34,714.29
Sept 27, 1915—Dr. Wreszinski	34,714.29
Sept 28, 1915—Ernest Kohn	34,714.29
Sept. 28, 1915—Edwin Reis	34,714.29
Sept. 28, 1915—Administrating Expenses for Estate	4,000.00
	M250,000.00

[fol. 48] Third. The defendants deny that they have knowledge or information sufficient to form a belief as to the allegations contained in paragraphs marked and numbered 12 and 13 of the bill of complaint herein.

Fourth. Referring to paragraph marked and numbered 15 of the bill of complaint, the defendants herein admit that there has been no accounting hitherto between the partners of Reis & Company, either as to the assets in Europe or as to those within the possession and subject to the control of the defendant Richard Mayer, but they aver, that the defendant Richard Mayer was unduly negligent in failing to account for the assets within his possession and subject to his control immediately upon the outbreak of the war between Germany and United States before delivering the assets and property to the Alien Property Custodian of the United States of

America, and in failing to state an account between the members of the firm of Reis & Company, who were co-partners at the time of the outbreak of such war, either then or at the time of the passing by the Congress of the United States of the joint resolution of July 2, 1921, terminating the state of way between Germany and the United States, and they aver that they were at all times ready and willing to render an account of the assets in Europe provided the said defendant Richard Mayer would also render a true and correct account of the American assets of Reis & Company.

Fifth. The defendants deny that they have knowledge or information sufficient to form a belief concerning the allegations contained in paragraph marked and numbered 22 of the bill of complaint.

Sixth. By way of answer of the allegations contained in paragraphs marked and numbered 24 and 25 of the bill of complaint the defendants herein annex to their answer as Exhibit II a true and correct account of the assets of the co-partnership of Reis & Company situated in Europe, showing Richard Mayer's interest therein, without any deduction by reason of any dealings or neglect on the part of said Richard Mayer as a member of said co-partnership. The defendants are unable to approximate Richard [fol. 49] Mayer's share in the entire assets of the co-partnership of Reis & Company since they have received at no time an account from the said Richard Mayer of the assets in his possession and subject to his control as the partner in charge of the American branch of the business of Reis & Company.

As a first separate and distinct defense and by way of reply to the allegations of the answer of Richard Mayer, Richard Mayer Company and the Anglo American Cotton Company interposed herein, the defendants allege:

Seventh. That the account annexed to the answer of the aforesaid defendants as Exhibit A is false and untrue, and that the defendant Richard Mayer knows the same to be false and untrue.

Eighth. That the instrument dated February 7, 1917, upon which the defendant Richard Mayer expressly relies in rendering his account as entitling him to the American assets of Reis & Company was in fact prepared in the month of February of the year 1919, at which time it was acknowledged by a German notary, and that it was immediately cancelled and nullified by a writing executed simultaneously therewith, similarly signed and acknowledged. We annex hereto as Exhibit III copy of the cancellation agreement signed by Karl Mayer, the absence trustee who signed the instrument relied upon by Richard Mayer, and also the translation thereof, which is marked "Exhibit IV." That said writing or instrument relied upon by Richard Mayer was furnished him at his request and for his own use upon receipt of a letter from him and from his then attorney, Guy Murchie, and upon receipt of a cable from the said Richard Mayer through the Spanish Embassy requesting the preparation of such an instrument. True copies of such communications

are annexed hereto as Exhibit V. That immediately upon the outbreak of the war, and without the knowledge, consent or authorization of the members of the firm of Reis & Company in Germany, the defendant Richard Mayer asserted and represented to the Alien Property Custodian of the United States that he had sole legal and equitable ownership of the entire capital stock of the Richard Mayer [fol. 50] Company and the Anglo American Cotton Company, and of miscellaneous stocks and bonds and notes receivable deposited with Messrs. Lee, Higginson & Company of Boston, Mass., and with the First National Bank of Boston, Mass., and thence transferred to the custody of the State Street Trust Company of Boston, Mass. He stated in an affidavit under date of November 6, 1918, which was delivered to the Alien Property Custodian, Washington, D. C.:

"That the partnership agreement between me and the other members of Reis & Company was dissolved in any event on April 6, 1917 upon declaration of War between the United States and Germany; that all property and money which may have formerly been used for partnership business was withdrawn from the partnership without delay and that no part of any property has been used by me since April 6, 1917 for the benefit of or in the interest of any Alien enemy or an ally of the enemy of the United States; that I took over the ownership of the stock of Richard Mayer Company and the Anglo American Cotton Company; that I have ever since treated all said property as my own; that I have invested it outside of any partnership purposes in private investments; that my said partners have never made any claim upon it, and I believe they have no claim upon it."

Prior to the receipt of the above named communications there had never been any discussion, correspondence or communications whatsoever between the German partners and the said Richard Mayer regarding any transfer of any part of the assets of the firm of Reis & Company, wherever situated, or regarding any consent to such transfer. That whatever papers or writings were furnished to the defendant Richard Mayer by his German partners were furnished to him after he had taken a definite stand toward the Alien Property Custodian of the United States asserting his individual ownership of the American assets of Reis & Company, and they were all prepared and sent from Switzerland during the year 1919, in com- [fol. 51] pliance with his instructions for use by him at his own risk, and they were not binding upon the German partners, having been cancelled and rendered null and void at the time they were made, all of which the defendant Richard Mayer well knew.

Ninth. That at all times aforesaid the members of the firm of Reis & Company other than Richard Mayer, were not represented by an American attorney and had no knowledge of any action then pending in the American courts affecting or involving the partnership property, and they were advised by the said Richard Mayer in his cable of February 12, 1919 (Defendants' Exhibit V), that the property was advertised for sale by the Alien Property Custodian.

That the instrument relied upon by the defendant Richard Mayer in his accounting was furnished to him for the express purpose of preventing the sale of the partnership property by the Alien Property Custodian. On information and belief, that no action was commenced by the defendant Richard Mayer until the month of April, 1919. That in said action, which is referred to in the bill of complaint and in the answer of the defendant Richard Mayer as "In No. 925 in Equity in this court," the defendants appearing herein were not represented by an attorney, and they did not file an answer or an appearance although they had notice thereof.

Tenth. That the instrument relied upon by the said Richard Mayer in his accounting is null and void, on the ground that at the time of its execution Ludwig Reis, one of the parties thereto, was dead, having died on the tenth day of January, 1918, and on the further ground that the absence trustee purporting to represent Richard Mayer in the transaction had no authority under German law to sign or execute such an instrument; and on the further ground that an instrument of that character required judicial or notarial authentication; and on the further ground that the absence trustee was improperly appointed, the court having no jurisdiction to appoint the same under Section 1911 of the German Civil Code, which provides:

"1911. A curator absentis may be appointed for a person of full age, who is absent and whose place of residence is unknown, to [fol. 52] take charge of his property affairs, so far as is necessary. * * *

"The same rule applies to an absent person whose place of residence is known, but who is prevented from returning to take charge of his property affairs."

Richard Mayer's address was always known to his German partners, and Richard Mayer was not prevented from "returning" at the time the absence trustee was appointed, to wit, in August of the year 1916; and on the further ground that the German court has no jurisdiction to appoint an absence trustee for an American citizen to bind him in the making of agreements or in the signing of instruments; and on the further ground that under German law, the acts of such absence trustee in the signing of an instrument such as the one relied upon by the defendant Richard Mayer in his accounting were null and void, and in contravention of law as laid down by Sections 1915, 1821, 1822, 1823, 311, 128, 125 of the German Civil Code. That any and all acts of Karl Mayer, brother of the defendant Richard Mayer, in reference to the aforesaid instrument or in regard to Richard Mayer's interest in the firm of Reis & Company were unauthorized and could not be ratified under German law or under American law, being in contravention of the laws of the United States, particularly of the act known as "Trading with the Enemy Act."

Eleventh. That with regard to the assets of Reis & Company as they existed on April 6, 1917, at the time of the outbreak of war

between the United States and Germany, the European partners at no time "took over all the European assets and treated them as their own," but on the contrary the defendant Richard Mayer's undistributed right, title and interest thereto was always recognized by them and that the defendant Richard Mayer has even after the outbreak of the war been carried as a partner on the books of the firm of Reis & Company, and that his name remained in the Handels-register, a book in which the names of partners of German firms are required by law to be recorded.

Twelfth. That there never existed any arrangement or agreement, express or implied, between the said Richard Mayer and the defend-[fol. 53] ants herein in regard to the ratio of marks to dollars used in computing the amounts due any of the partners.

Thirteenth. That there never has been an accounting or a distribution in partnership dissolution and liquidation between the defendants herein and the defendant Richard Mayer, and that the defendants have at no time renounced their claims against the assets in the United States belonging to the partnership of Reis & Company in favor of Richard Mayer.

Fourteenth. That upon any accounting the defendants herein will be entitled to surcharge the distributive share of the said Richard Mayer, the defendant herein, in substantial amounts for gross misconduct in the administration of the American branch, both prior to and after the outbreak of the war between the United States and Germany.

Fifteenth. That since the year 1915 and continuously thereafter, the defendant Richard Mayer has wrongfully, and in violation of the articles of co-partnership, converted a large amount of the assets of Reis & Company to his own use, and that in violation of such articles of co-partnership he has made unauthorized and improper investments, and unauthorized and improper and unlawful expenditures of the funds of the partnership referred to whereby said funds and assets have been wasted and lost and said Richard Mayer the defendant herein has thereby become indebted to said partnership in the amount of said losses and for interest upon the sums wrongfully converted to his own use or wrongfully applied.

Sixteenth. That particular instances in connection with the misappropriation of partnership funds and assets are as follows:

Withdrawals of partnership funds for private and individual use in violation of the partnership agreement, thereby depriving the business of the use of the capital intended for it.

Speculating in stocks, bonds and other securities in violation of the partnership agreement.

Making of loans and purchasing notes and other obligations in violation of the partnership agreement.

[fol. 54] Failure to render accounts and to make remittances when due.

Absenting himself from the partnership business without a proper excuse for three and four months at a time, resulting in serious losses to the firm of Reis & Company.

Making of improper expenditures.

Appropriating firm assets and holding them out against the other partners in violation of the co-partnership agreement.

The defendants herein are unable to enumerate all the acts of misconduct as a partner of the firm of Reis & Company chargeable to the defendant Richard Mayer herein in the absence of a correct and a complete accounting by said Richard Mayer of the conduct of the American branch of Reis & Company in the United States, and they beg leave to offer evidence at the trial of such further and different acts of misconduct, mismanagement or improper performance of duty as may be disclosed by a more detailed and complete accounting of said Richard Mayer.

Sixteenth. That the American assets of Reis & Company consisted, in part, of the entire capital stock of the Richard Mayer Company and the Anglo American Cotton Company, both corporations founded and organized under the laws of the State of Massachusetts, from partnership assets and from funds belonging to the firm of Reis & Company, and that their capital stock and assets were equitably the property of said partnership and that said capital stock was at no time the property of Richard Mayer.

Wherefore, these defendants say that the bill of complaint should be dismissed with costs as to the defendants herein other than the defendant Richard Mayer, and that, as to him, the account rendered by the said Richard Mayer in his answer be rejected and that it be declared ineffective and not binding upon the defendants herein, and the said Richard Mayer be required to account for the assets in his hands or subject to his control belonging to the co-partnership of Reis & Company.

By Their Attorney, Clifford B. Warren, 53 State Street, Boston, Mass.

[fol. 55] *Duly sworn to by Karl B. Strauss. Jurat omitted in printing.*

EXHIBIT I TO ANSWER OF EDWIN REIS ET AL.

Grand Ducal Notary's Office II, Mannheim, as Court for Administration of Estates Draft

Inheritance Certificate

Issued in consequence of Paragraph 2353 of the Civil Laws, Article 147 of the Introduction Law connected therewith and Paragraph 45 of the Badenese Justice Police Laws.

The, in Mannheim, Friedrichsplatz 10 living bequeather.

Ludwig Reis, Manufacturer.
Died in Mannheim on January 10th, 1918.
The instituted investigations and the proofs secured by the undersigned Notary's Office as Court for Administration of Estates had the result that the following are the lawful heirs of his bequest.

1. His Widow, Mrs. Anny Reis, nee Bayerthal, share of inheritance ¼ tel.

2. His children.
a. Anelise Reis, born February 6th, 1912 at Heidelberg, share of inheritance ⅜ tel.
b. Ruth Friederike Reis, born September 9, 1914 at Heidelberg, share of inheritance ⅜ tel.
Mannheim, November 18th, 1918.
Grand Ducal Notary's Office Mannheim II.

(Signed) Knecht.

[fol. 56] The above copy conforms to the original draft presented to me.
Mannheim, February 18th, 1919.
(Signed) Knecht, Grand Ducal Notary at the District Court Seat, Mannheim. (Seal Notary's Office II.)

EXHIBIT H TO ANSWER OF EDWIN REIS ET AL.

Account of the Copartnership of Reis & Company

European Assets

We are now rendering an account of all the assets of Reis & Company in our possession and subject to our control, showing particularly the European Assets as distinguished from the American assets over which we have no control at present.

For the purpose of this account *was* are taking the date of April 6, 1917 as the date of dissolution of the firm. Being unable to state an account as of that particular date, no inventory having been taken at that time, we shall arrive at Richard Mayer's interest in the European assets by comparing the balance sheets of December 31, 1916 and of December 31, 1917 and by striking a fair average for the period from December 31, 1916 until April 6, 1917 on the basis of the profits for the entire year 1917, this being the only feasible method of determining Richard Mayer's share in the assets subject to our control as of April 6, 1917. In the absence of an inventory being taken on the 6th day of April 1917, it is impossible for anyone to determine at this date the exact values of the property of Reis & Company which were on hand in Europe on April 6, 1917. We are pursuing exactly the same method which was followed by Price, Waterhouse when ascertaining the figures of Reis & Company. It will be readily seen on comparing their figures with ours, that our

figures are substantially similar and we have supplemented the omissions contained or referred to in the report of Price, Waterhouse, which, as they explained, were due to our failure to show them certain books, and to our failure to permit inspection of all records showing the entries prior to December 31, 1916, and subsequent to [fol. 57] January 1, 1918. These books and entries were withheld from them because they would have disclosed the fact that Richard Mayer was carried as a partner even up to the time when the examination was made, namely, the Fall, 1920. All books of original entry including those so withheld will be produced at the tiral.

By way of supplementing the Price, Waterhouse report regarding the Manchester branch of the business of Reis & Company, we state the following:

The business with Manchester was carried on as though the Manchester office were a customer rather than an independent branch of the business. The Manchester office had no capital, all books being kept in Germany, and was functioning as buying and selling agent. The assets there belonging to Reis & Company, consisted only of a willowing plant and some office furniture. When the War broke out between England and Germany, or soon thereafter these assets were taken over by the British Custodian and the business was liquidated. The net result of the liquidation of the Manchester assets consisting of the aforesaid equipment and office furniture and including some outstanding customer's accounts, amounted to about £4,500, which in accordance with the arrangement entered into between England and Germany can only be claimed by Reis & Company at the prewar rate of about 20 marks to the pound, making a total of about 90,000 marks present value. At the outbreak of the War Reis & Company was owing to the Manchester Branch on their books an amount of about £35,000—or M 734,297.50. This same amount appears as a debit item, namely under Manchester Current Account in the liabilities ascertained by Price, Waterhouse as per December 31, 1916.

Owing to the depreciation of the mark in 1917 this liability had to be increased to the sum of M 931,303.97, which was then equivalent to the Sterling amount previously mentioned. The Manchester account has not yet been disposed of entirely. We recently made a payment of seven hundred thousand odd marks as an installment [fol. 58] against our English debt to the German trustee. A further similar payment will have to be made yet, but for the purpose of this accounting we consider this account closed, thereby, benefiting Richard Mayer in not debiting him with any additional amounts that may still have to be paid by the co-partnership of Reis & Company in this connection.

Hereto annexed as Exhibit A, is a balance sheet of December 31, 1916, consisting of eight pages.

Hereto annexed as Exhibit B, is a balance sheet as of December 31, 1917, consisting of seven pages.

—, as Exhibit C, is a statement showing the distributive shares of the several co-partners of Reis & Company since 1913 until the end of the year 1917.

The figures ascertained by Price, Waterhouse as the distributive shares of the partners per end of year 1917 differ materially from the figures appearing in Exhibit C, because as pointed out above the original books containing the private accounts of the co-partners had been withheld from Price, Waterhouse, but they correctly state in their report that they "do not feel justified in placing too much reliance upon the figures contained in these accounts."

In rendering this account we have taken into consideration not only the Book Values of the assets of Reis & Company as of April 6, 1917, but also their actual values as of that date. The entire assets can be readily divided into two groups, one consisting of Merchandise, Accounts Receivable, Cash on Hand, and the other consisting of Fixed or Immovable assets, such as Real Estate and Machinery. The first group mentioned was turned into cash during the year 1917. The second group with the exception the Herzberg and Franzenthal plants which have been liquidated, and for which the cash received appears in the account, is still on hand today, and we have taken into consideration in regard thereto the highest market value since [fol. 59] April 6, 1917 giving Richard Mayer the benefit of any enchancement in value since that date to which he may possibly be entitled.

Exhibit C shows that we have stated Richard Mayer's distributive share in two ways assuming on the one hand the Book Value of these fixed assets and, on the other hand, the actual value of such assets up to date.

No allowance has been made in this accounting for the good will of Reis & Company. The good will at the time of the outbreak of the War between Germany and the United States was completely destroyed by the outbreak of the War. It is probably due to the same reason that no allowance was made for the good will of the American branch of the business by Richard Mayer in the purported account he rendered.

With regard to reserves for losses on contracts and reconstruction it may be said that these reserves were entirely used up for the making good of losses incurred through unfavorable trade contracts entered into prior to the War, and in order to make good the depreciation, cost of repair to buildings and machinery, and reconstruction work made necessary through the War.

Mayer's statement that a fixed rate of exchange was arranged between the partners is absolutely unfounded, as no such arrangement was ever made. The partnership agreement which alone governs all questions between the partners contains no reference to such an agreement. When Mayer entered the partnership it was not dollars which he brought in, but merchandise and accounts receivable, which were credited to him in marks, namely the amount of M 206,-054.02. His share of the first year's profits since he entered the partnership was also credited to him in marks, and at the end of the fiscal year he received a statement showing the balance of his capital account to his credit, also in marks. When he was in Europe in 1914, he as a partner of the firm, looked into his affairs and again saw that the accounts were kept in marks, and marks only. This

had been the practice of the firm ever since it had been started in 1897. All accounts dealing with the affairs in Germany or with those of the branch offices in America, and later on in England were car- [fol. 60] ried on and conducted at the head office always in marks. The branch offices simply sent their monthly and annual statements and stocktaking sheets and these were embodied in the general balance sheet drawn up in Germany. Whatever rate of exchange was adopted in transmuting foreign assets into marks is quite immaterial, and was for bookkeeping purposes only, distribution would ultimately have to be made to the partners on the basis of marks on hand, and they would all be treated alike upon such distribution. Whenever marked fluctuations occurred in the rate of exchange, such fluctuations were at once taken into consideration.

Richard Mayer quite correctly states that no question of exchange is involved in this accounting. The German law recognizes only one kind of German currency without regard to the time when liability or right may have accrued. The law of August 4th, 1914 distinctly says that the currency of the German mark need no longer be based on a certain gold standard, and paper currency was made compulsory. Mayer, as well as all the other partners, have to stand alike the consequences of any rise or fall in the mark.

Deductions are also made in this account for moneys paid to Richard Meyer's relatives in Germany pursuant to an order given by him when in Germany in 1914. We are further deducting certain sums for payment made on his behalf for taxes due by reason of profits earned up to 1917. The German Government levied these taxes against Richard Mayer in the same way as against all other partners, for he was carried as a partner on the books of the firm right along, and his name remained in the Handelsregister as a registered partner of the firm. The total amount of such disbursements made on behalf of Mayer is M 316,832.40.

American Assets

According to our account, Mayer's interest in the European assets as of April 6, 1917 is not as he says $511,855.46 but M 1,836,353.80 as shown by our books. The American assets as enumerated by Richard Meyer consist of securities and investments of a very speculative character, such as are entirely foreign to the business of [fol. 61] Cotton Waste and kindred lines for which the partnership of Reis & Company was formed. All of the assets in the form as they now appear, excepting Cash on hand must be deemed illegal investments, the investments having been made in violation of the partnership agreement. The withdrawals of funds from the partnership business were made by Mayer as early as 1915 without the knowledge or consent of the European partners, and substantial surcharges will be established against Richard Mayer for such unlawful withdrawals. Surcharges will also be established against Richard Mayer in connection with the conduct of the business of the Anglo-American Cotton Company and his refusal to liquidate the same at a time when substantial assets were still on hand. The losses occasioned

to the partnership of Reis & Company through Richard Mayer's misconduct, interference and mismanagement in this respect are at least the sum of $50,000.

Regarding the interest items with which Richard Mayer credits himself, it is not acknowledged by us that either he, or his European partners actually appropriated any part of the partnership assets to their own use. Such a claim is entirely contrary to fact, as no assets either in Europe or in America were taken over at the outbreak of the War by any agreement express or implied. Mayer's interest credits to himself are based on the assumption "that the property is to be treated as having been taken over by me as my own on the outbreak of the War." He tries to establish a mutual consent by which such transfers are supposed to have been effected. Nothing was done, however, with regard to the European assets at any time since or before the outbreak of the War, and Richard Mayer was the only one who, at the outbreak of the War, affirmatively took the position toward the Alien Property Custodian that there had been a transfer of partnership assets. If he did take over the assets on hand in America and treat the same as his own, he would normally be chargeable with interest on account of his misconduct in appropriating firm assets to his own use, except that War conditions might possibly furnish an excuse for such an ostensible change of owner-[fol. 62] ship. In so far as his conduct was purely ostensible the German partners had no objection to his asserting any ownership over the American assets, and for that reason no claim is made by us for interest on the distributive shares of the German partners in the American assets, unless it will appear that Richard Mayer was negligent after dissolution by War of the partnership, in liquidating the American assets and accounting to his co-partners before War conditions and War time legislation in the United States made such accounting impossible.

Owing to the outbreak of the War in 1914 and the difficulty of communication between America and Germany it was thereafter impossible to keep records of the American branch of the business of Reis & Company in Germany, and accordingly separate records were thereafter kept by Richard Mayer, who was in charge of the American end of the business. Complete responsibility for an accurate accounting of the American assets must, therefore, rest upon Richard Mayer. Assuming that the figures given by Richard Mayer, who was in charge of the American end of the business. Complete responsibility for an accurate accounting of the American assets must, therefore, rest upon Richard Mayer. Assuming that the figures given by Richard Mayer, as of April 6th, 1917 that the assets in America amounted to $910,014.07 are correct, we beg to point out that these assets are subject to aggregate liability of 11½% equal to $104,-651.61 for bonus payments due various employees of the firm, namely:

Mr. Alex Leiser	5%
Mr. Gustav Ely	5%
Mr. Friedrich Heinstein	1%
Mr. Adolph Senft	½%
Making a total of	11½%

These persons are entitled to these bonuses under written agreements some of which were drawn up by Mayer himself.

Despite the dissolution of the partnership at the outbreak of the War in the year 1917, the assets of the firm of Reis & Company in Europe were not in fact liquidated, for the reason that the liquidation of the entire business including the American assets was impossible. Our account shows the reasonable value of all assets in our hands as of April 6, 1917 with the exception only of those assets [fol. 63] then on hand which have since been sold, the proceeds of which sales however appear in our books. We have set forth fully in our answer that there is no basis whatsoever for the claim made by Richard Mayer that the German partners and the American partners divided the assets by mutual consent. Such an assertion defies all reason since the American assets at the time when the instrument dated February 7th, 1917 was actually drawn up, namely February 1919 by far exceeded in value the value of all European assets of the firm. Mr. Mayer's claim is obviously advanced for the purpose of justifying and supporting statements made by him to the Alien Property Custodian.

On the question of costs, and expenses incurred in connection with litigation, we believe the entire burden should be borne by Richard Mayer inasmuch as such disbursements resulted from his own initiative and without the consent and approval in the first place of the other members of the co-partnership. Whatever was done by the other partners in the way of strengthening the claim as asserted by Richard Mayer as against the Alien property Custodian was done purely for the purpose of shielding Mayer against the consequences of a wrong originally committed by him. Legal action would have been unnecessary if Richard Mayer had truthfully stated the facts and declared the real ownership of the American assets found in his hands and which, it is true, for the greater part appeared in his individual name.

EXHIBIT III TO ANSWER OF EDWIN REIS ET AL.

(Copy)

Friedrichsfeld, den 7 Februar, 1917.

Reis & Co., Friedrichsfeld (Baden):

Die heute zeischen den Gesellschaftern der Firma Reis & Co., Herrn Edwin Reis, Ludwig Reis und Karl B. Strauss einerseits und Herrn Richard Mayer, resp. dessen gesetzlich ernanntem

Abwesenheitspfleger, Harrn Karl Mayer, Rohrbach andererseits getroffene Vereinbarung vom 7, Februar 1917 betreffs der Verteilung des Gesellschaftsvermogens der Firma Reis & Co. im Falle [fol. 64] des Kriegsausbruches mit Amerika, ist ausdrucklich nur eine Proforma-Abmachung, um die amerikanischen Vermogenswerte der Firma Reis & Co., vor Confiscation zu schutzen.

In diesem Sinnes ist die oben genannte Vereinbarung getroffen worden, was die Uterzeichneten hiermit ausdrucklich anerkennen.

Friedrichsfeld, den 7 Februar, 1917

(Sig.) Karl Mayer.

EXHIBIT IV TO ANSWER OF EDWIN REIS ET AL.

The agreement entered this day between the partners of the firm of Reis & Company: Messrs Edwin Reis Ludwig Reis and Karl B. Strauss on the one hand and Mr. Richard Mayer, or rather his duly appointed absence trustee, Mr. Karl Mayer, Rohrbach, on the other hand, dated February 7th, 1917 concerning the distribution of the partnership property of the firm of Reis & Company in the event of the outbreak of a War with America, is expressly only a proforma arrangement in order to safeguard the American assets of the firm of Reis & Company against confiscation.

In this sense the above agreement has been entered into, a thing which is expressly recognized by the undersigned.

(Sig.) Karl Mayer

Friedrichsfeld, February 7, 1917.

EXHIBIT V TO ANSWER OF EDWIN REIS ET AL

(Copy)

William W. Butler, Guy W. Cox, Guy Murchie, James F. Bacon

Telephones: 1300-1301 Fort Hill

Law Offices of Butler, Cox, Murchie and Bacon, Eighth Floor, 77 Franklin Street, Boston

Boston, December Sixth, 1918.

Karl B. Strauss, Esq., P. O. Box 6091, Zurich, Switzerland.

DEAR SIR: Mr. Mayer has consulted me concerning a personal claim for property formerly in his custody, and advises me that [fol. 65] you are an English subject now resident in Switzerland, and were a member of the firm of Reis & Company.

It is important that you should have notice of his claim and also if you can, to enable to set forth the facts as they are to the United States Courts which will hear the claim. The Alien Prop-

erty Custodian of the United States, having taken over this property the procedure is to file a claim with him and if not allowed to take the matter to the courts for the determination of the Court on the facts.

The A. P. C. for some reason has been hostile to the claim, although the local evidence obtained here seems to me clearly to bear out Mr. Mayer's contention. However, the evidence is not complete as it might be and I think that you may be able to supply the additional data. We require the following evidence:

(1) The original partnership agreement signed by the partners or a properly certified copy of which would meet requirements of our rules of evidence before a court in the United States.

(2) Reliable evidence of the net worth of the partnership as of April 6, 1917. In any event, the partnership agreement was terminated by the Declaration of War between Germany and the United States and the distribution of the funds in the United States would depend somewhat upon the net worth of the partnership at the time of its termination. The funds in the United States amounted to approximately $900,000 net.

(3) Evidence of Mr. Mayer's right to withdraw funds from the partnership, to invest the same and hold them permanently against his partners. Under the partnership agreement, as I understand it, this right existed. Mr. Mayer had put in originally $50,000 and after the assets of the partnership distributable to him equally the share of the largest contributing pratnership which I understand was Mr. Edwin Reis, then pro rate above that reserve Mr. Mayer had no right to withdraw funds and retain them as his own. This he did, on information received from Mr. Laible, from yourself and [fol. 66] Mr. Reis as to the net worth of the partnership in 1916.

(4) Evidence of the consent of Edwin Reis and yourself and of the Estate of Ludwig Reis to Mr. Mayer's taking over the American assets as his share of the partnership in dissolution. That is to say, I understand that you consented to this method of settlement and if so, Mr. Mayer would be entitled to withhold all his property against the Alien Property Custodian and against his partners.

(5) It may be possible for you to come over to the United States with this evidence. It should be in proper shape to accomplish the results required. If you cannot come I think it will be advisable to take your oral deposition and that of Mr. Edwin Reis and the representative of the Ludwig Reis Estate in Switzerland if it is possible by order of the United States court.

In the meantime, any facts bearing on the above situation that you can send to me, I shall much appreciate.

Will you also, let me have your permanent address in case you are contemplating at any time leaving Zurich?

Yours very truly, (Sig.) Guy Murchie.

A Hy GM: M P.

EXHIBIT V

Copy

Em' ajada de Espana, Am. Div. 835, 2109 en Berlin

Mr. Edwin Reis, Friedrichsfeld, Baden:

The Royal Spanish Embassy begs to inform you, that the following message has been sent from the United States for you:

"Kindly send me partnership agreement want original or copy competent as court evidence necessary have agreement because property seized by alien property custodian seventeen partnership terminated in any event by declaration of war immediate response im-
[fol. 67] portant because property advertised for sale by custodian.
Richard Mayer."

The Embassy advises you to send immediate answer, which can be forwarded through same.
Berlin, February 12, 1919.

EXHIBIT A TO ANSWER OF EDWIN REIS ET AL.

Reis & Company

December 31, 1916.

Land and Buildings	M 252,037.66	
Plant and Machinery	35,454.–	
Furniture and Fixtures Tools and Utensils	1.–	
Merchandise	1,371,553.63	
Bills of Exchange	256.30	
Cash on Hand	5,811.29	
Bonds	369,626.80	
Acct. Receivable	6,405,799.87	
Accts. Payable		M 4,007,764.85
Mortgage		145,874.62
Capital		3,119,196.78
Profit and Loss		1,167,704.30
	M 8,440,540.55	M 8,440,540.55

The Capital and Profit & Loss on this balance sheet have not been diminished by the sum M 120,340.18, which, in correct accounting should properly appear as an expense item, representing bonuses due employees, pursuant to written agreements with them.

These bonuses were deducted from moneys due the several co-partners whose distributive shares were reduced by proportionate amounts.

The capital and profit and loss per December, 1916, should therefore, be reduced from M 4,286,901.08 to M 4,166,560.90.

[fol. 68] Investment Account December 31, 1916

4½% German Treasury Certificates Par value M 250,000.– Cost	M 237,500.–
5% German War Loan Certificates Par value M 1,900,000.– Cost	M 1,862,000.–
Total	M 2,099,500.–

Distributed amongst the Partners, as shown by the books, as follows:

4½% Treasury Certificates Edwin Reis	M 65,312.50
5% War Loan Certificates " "	512,050.–
4½% Treasury Certificates Ludwig Reis	65,312.50
5% War Loan Certificates " "	512,050.–
4½% Treasury Certificates K. B. Strauss	59,375.–
5% War Loan Certificates " " "	465,500.–
4½% Treasury Certificates Richard Mayer	47,500.–
5% War Loan Certificates " "	372,400.–
Total	M 2,099,500.–

Capital in Switzerland December 31, 1916

Account opened March 9, 1916	M 4,046,528.40
4% Interest to June 30, 1916	49,457.55
4% Interest to Dec. 31, 1916	81,919.70
	M 4,177,905.65
Less Postage	.65
	M 4,177,905.–

Erste Deutsche Kapok Fabrik December 31, 1916

Merchandise	M 35,707.24	
Cash	499.86	
Machinery	1.–	
Bills of Exchange	125.78	
Accounts Receivable	177,367.63	
Reserves for Bad and Doubtful Accounts and Discounts		M 10,000.–
[fol. 69] Reserves for Plant Upkeep and Improvements ordered		25,000.–
Upkeep and Improvements ordered:		
Accounts Payable		4,774.27
Profit and Loss		51,427.74
Capital		122,449.50
	M 213,651.51	M 213,651.51

Algersdorfer Streichgarnspinnerei G. M. B. H. Franzenthal

December 31, 1916.

Capital invested in above factory.....	M 360,000.–

The profit made per December 31, 1916 of Kr. 8,633.82 @ 64= M 5,525.64 was withdrawn and is included in the Capital account of Reis & Company, per December 31, 1916.

Baumwollbleicherei Herzberg G. M. B. H. Herzberg

December 31, 1916.

Capital invested by Reis & Company in above Factory	M 535,085.55
Less Loss per December 31, 1916.....	23,760.28
	M 511,325.27

Recapitulation of European Assets of Reis & Company per December 31, 1916

Reis & Company, Friedrichsfeld.....	M 4,166,560.90
Investment Account (Bonds)	2,099,500.00
Swiss Account	4,177,905.–
Kapok	173,877.24
Algersdorf (Franzenthal)	360,000.–
Herzberg	511,325.27
	M 11,489,168.41

[fol. 70]

European Assets and Partners Distributions December 31, 1916

		Edwin Reis	Ludwig Reis	K. B. Strauss	Richard Mayer
Reis & Co.	M 4,166,560.90	1,445,154.47	1,612,787.27	458,419.28	650,199.88
Investment Account (Bonds withdrawn from the business)...	2,099,500.00	577,362.50	577,362.50	524,875.00	419,900.00
Capital in Switzerland..	4,177,905.00	1,148,923.88	1,148,923.87	1,044,476.25	835,581.00
Kapok Factory	173,877.24	54,298.73	54,298.73	37,725.82	27,553.96
Algersdorf (Franzenthal)	360,000.00	99,000.00	99,000.00	90,000.00	72,000.00
Herzberg	511,325.27	140,614.45	140,614.46	127,831.31	102,265.05
	M 11,489,168.41	3,465,354.03	3,632,986.83	2,283,327.66	2,107,499.89

Messrs. Price, Waterhouse stated in their accounting, as per page 134, the above total assets as...		M 11,302,951.84
Which, according to above figures amount to.....		11,489,168.41
Making a difference of.....		186,216.57

Which difference is accounted for as follows:
Messrs. Price, Waterhouse quote on page 132 in their accounting:

Swiss capital and investments as.	M 6,090,681.19	
of which the Swiss capital alone, see page 145 of their accounting, amounts to	4,177,366.15	
Leaving for investments.	M 1,913,315.04	
Whereas the investments amounted to	M 2,099,500.	
Producing a difference of.....		M 186,184.96
[fol. 71] Messrs. Price, Waterhouse quote the profit for the Franzenthal factory, as per page 134 of their accounting, as	Kr. 9,156.72	
Which amount is incorrect, and, as per page 131, according to their accounting should be....	Kr. 8,633.82	
Which latter amount converted at exchange rate of 64, equals	M 5,525.64	
instead of, as per page 134 of their accounting	5,494.03	
producing a further difference of		M 31.61
Making a total difference of as quoted above		M 186,216.57

From the above it will be seen that the share of Richard Mayer amounts to M 2,107,499.89.

The amount reported by Price, Waterhouse as per page 135, of M 2,107,449.89 is a typographical error, as the amount is correctly quoted on page 137 of their report with M 2,107,499.89.

EXHIBIT B TO ANSWER OF EDWIN REIS ET AL.

Reis & Company

December 31, 1917.

Land and Buildings	M 264,834.66	
Plant and Machinery	38,297.–	
Furniture and Fixtures Tools and Utensils	1.–	
Merchandise	866,519.02	
Cash on hand	3,381.25	
Bonds	409,657.80	
[fol. 72] Accounts Receivable, including Bank Balances	4,771,883.03	
Accounts Payable		M 3,536,770.61
Mortgage		143,155.71
Capital		2,070,314.90
Profits and Loss		604,332.54
	M 6,354,473.76	M 6,354,573.76

The Capital and Profit and Loss on this balance sheet have not been increased by the sum of M 145,583.99 which in correct accounting should properly appear as Accounts Receivable or similar item, being overdrawings on the part of such employees on account of bonuses due them. The sum of M 145,583.99 was subsequently deducted from moneys due such employees at a later period.

The capital and profit and loss per December 21, 1917, should therefore be increased from M 2,674,647.44 to M 2,820,231.43.

Capital in Switzerland December 31, 1917

Balance January 1, 1917	M 4,177,905.–
4% Interest to June 30, 1917	83,558.10
4% Interest to December 31, 1917	85,229.25
	M 4,346,692.35
Less Postage	1.35
	M 4,346,691.–

Erste Deutsche Kapok Fabrik December 31, 1917

Merchandise	M 44,312.95	
Machinery	1.–	
Accounts Receivable	174,624.40	
Reserves for Bad and Doubtful Accounts and Discounts		M 10,000.00
[fol. 73] Reserves for Plant Upkeep and Improvements		25,000.00
Accounts Payable		1,609.63
Capital		158,344.73
Profit and Loss		23,983.99
	M 218,938.35	M 218,938.35

Algersdorfer Streichgarnspinnerei G. M. B. H. Franzenthal December 31, 1917

Capital invested per January 1, 1917	M 360,000.–
Additional Capital invested during 1917	180,000.–
Total Capital Investment	M 540,000.–
Profit per 1917	85,665.59
	M 625,665.59

The property carried on our books under the name of Algersdorfer Streichgarnspinnerei G. M. B. H. Franzenthal, was acquired during 1914, through purchase from receiver in Bankruptcy as a going concern.

About June 30th, 1915 a company with limited Liability was formed and all the assets and property aforesaid, were turned over by Reis & Company to this Company.

In February, 1920 the entire right, title and interest of Reis & Company in and to the Algersdorfer Streichgarnspinnerei G. M. B. H. Franzenthal, was sold for the sum of M 750,000, which was the fair and reasonable market value.

Baumwollbleicherei Herzberg G. M. B. H. Herzberg December 31, 1917

Capital invested per January 1, 1917	M 511,325.27
Additional Capital invested during the year 1917	144,914.45
Total Capital Investment	M 656,239.72
Less Loss per December 31, 1917	20,104.61
	M 636,135.11

[fol. 74] The above property was acquired through purchase as a going concern during the year 1915, after which a company with Limited Liability was formed.

Owing to the long duration of the War in Germany, there was no new raw material available which could be treated at the Factory, in consequence of which the operations resulted in losses, whereupon it was decided to dispose of the property.

The sale of this property took place finally on October, 1919, for the sum of M 1,260,000, which was the fair and reasonable market value.

Recapitulation of European Assets of Reis & Company per December 31, 1917

Reis & Company, Friedrichsfeld	M 2,820,231.43
Swiss Account	4,346,691.–
Kapok Factory	182,328.72
Algersdorf	625,665.59
Herzberg	636,135.11
	M 8,611,051.85

European Assets and Partners' Distribution December 31, 1917

		Edwin Reis	Ludwig Reis	K. B. Strauss	Richard Mayer
Reis & Co	M 2,820,231.43	975,622.90	682,064.72	319,122.36	843,421.45
Capital in Switzerland	4,346,691.00	1,195,340.03	1,195,340.02	1,086,672.75	869,338.20
Kapok Factory	182,328.72	46,595.60	46,595.59	45,996.00	43,141.53
Algersdorf (Franzenthal) ..	625,665.59	172,058.04	172,058.04	156,416.39	125,133.12
Herzberg	636,135.11	174,937.16	174,937.15	159,033.78	127,227.02
	M 8,611,051.85	2,564,553.73	2,270,995.52	1,767,241.28	2,008,261.32

Extract from Richard Mayer's Capital Account up to December 31, 1917, as Carried on the Books of Reis & Company, Friedrichsfeld

1913				1913			
Oct.	31.	Investment in Kapok Department	M 5000.—	July	1.	Capital Conto as per Inventory	M 206054.02
Dec.	1.	Balance	219708.05	Dec.	1.	Interest of Capital	3863.50
			M 224708.05	"	1.	20% of Net Profit for 5 months	14790.53
							M 224708.05
1914				1914			
May	31.	Balance of Conto Corrent Acct. as per Dec. 1, 1913	M 3578.25	Dec.	1.	Balance carried forward	M 219708.05
1915				1915			
Dec.	31.	Balance of Conto Corrent Account	6994.27	Dec.	22.	$870.35	3578.25
"	31.	20% Share in Herzberg	20000.—				
"	31.	20% share in Algersdorf Kr. 20,000	13400.—				
"	31.	Distribution share of Richard Mayer, back balance with Reis & Co., Friedrichsfeld	51039.18				
"	31.	Herzberg Machinery and Real Estate Account	49987.49				
"	31.	Balance	78287.11				
			M 223286.30				M 223286.30

Extract from Richard Mayer's Capital Account—Continued

1916				1916			
June	9.	Payment Algersdorf Capital Contribution Kr. 32,000.... M	22288.—	Jan.	1.	Balance carried forward..... M	78287.11
"	17.	Capital Contribution Algersdorf Kr. 16,000.....	12000.—	"	1.	Interest	19800.—
Dec.	31.	Balance Private Acct. from Conto Corrent.....	276.50	"	1.	Share of year's profit.....	820584.94
"	31.	Interest	60.—	"	1.	Difference on Interest.....	1300.—
"	31.	Share in Machinery and Real Estate Account, Herzberg...	37029.62	Dec.	31.	Interest for 1916	40549.26
"	31.	M50,000 4½% Treasury Bonds.	47500.—	"	31.	Share of year's profit Algersdorf 1915	618.31
"	31.	M380,000 5% War Loan.....	372400.—	"	31.	Share of year's profit Algersdorf 1916	179509.26
"	31.	Balance	649094.76				
			M1140648.88				M1140648.88

[fol. 76]

1917				1917			
Dec.	31.	Capital Contribution Algersdorf Kr. 60,000..... M	38400.—	Jan.	1.	Balance carried forward..... M	649094.76
"	31.	War Tax.....	266432.40	Aug.	11.	Return of M 50,000 Treasury Bonds	47500.—
"	31.	Herzberg Machinery and Real Estate Account.....	28982.89	"	11.	Return of M 380000 War Loan.	372400.—
"	31.	Transfer to Conto Corrent private account.....	3959.15	Dec.	31.	Share in Algersdorf 1916.....	1105.12
"	31.	Balance	843421.45	"	31.	Interest on Capital.....	29209.50
				"	31.	Share of year's profit 1917....	81886.51
			M1181195.89				M1181195.89

Distributive Shares of the Several Copartners of Reis & Company per November 30, 1913

Edwin Reis	Ludwig Reis	K. B. Strauss	Richard Mayer
M 1,235,275.47	M 1,228,451.99	M 401,946.69	M 219,708.05

Distributive Shares of the Several Copartners of Reis & Company per December 31, 1915

	Edwin Reis	Ludwig Reis	K. B. Strauss	Richard Mayer
Reis & Co	M 859,197.69	M 826,822.03	M 141,212.19	M 78,287.11
Herzberg	96,232.80	96,232.80	87,484.36	69,987.49
Algersdorf (Franzenthal	30,646.00	30,646.00	27,860.00	22,288.00
Kapok Factory	52,741.64	59,511.34	10,277.72	5,644.45
Total	M 1,038,818.13	M 1,013,212.17	M 266,834.27	M 176,227.05

Book Value of Richard Mayer's Capital Account in Europe per April 6, 1917

The above is ascertained by taking as a basis the balance of December 31, 1916 and adding his proportionate share of profits earned during the entire year of 1917.

Richard Mayer's capital account per December 31, 1916 of the European Assets amounted to.....		M 2,107,499.89

Which corresponds with the figures ascertained by Messrs. Price, Waterhouse, as contained in their report, see page 137.

To the above amount has to be added his proportionate share of earnings covering the period from December 31, 1916 to April 6, 1917.
[fol. 77] Total profits earned in Europe during 1917 amounted to M 909,560.37, as per attached statement and of which amount the sum of M 173,703,703.17 was credited to Richard Mayer as being his share of 1917 earnings.

For 96 days, covering period from Dec. 31, 1916, to April 7, 1917, his share 96/365 of M 173,703.17 amounts to		M 45,686.31
Which added to the amount of his capital account Dec. 31, 1916, totals.....		M 2,153,186.20

From the latter amount the following items have to be deducted:

War profit tax to German Government during 1917 for account of Richard Mayer	M 266,432.40	
Payments made to relatives of Richard Mayer for his account during the years 1917, 1918, 1919, 1920, 1921	50,400.00	
		316,832.40
Leaving the net amount of Richard Mayer's capital account adjusted per April 6, 1917 with		M 1,836,358.80

Kapok Department

Extract from the Books Showing Richard Mayer's Participation in Kapok Department up to End of 1917

1917		1916	
Dec. 31. Transfer to Private account.....	M 3,291.72	July 1. Capital Investment and profits accrued	M 17,417.55
" 31. Balance	40,000.—	Dec. 31. Share of profit and interest.....	10,136.41
		1917	
		July 1. Share of profit and interest.....	10,790.77
		Dec. 31. Share of profit and interest.....	4,946.99
	M 43,291.72		M 43,291.72

[fol. 78] Algersdorf Extract from the Books Showing Richard Mayer's Participation in Algersdorf (Franzenthal) up to End of 1917

1915.		
Dec. 31.	Share in business Capital.....	Kr. 20,000.—
" 31.	Share of Capital Increase.....	12,000.—
1916.		
June 9.	Share of Capital Increase.....	32,000.—
" 17.	Share of Capital Increase.....	16,000.—
Dec. 31.	Share of Capital Increase.....	40,000.—
1917.		
Dec. 31.	Share of Capital Increase.....	60,000.—
		Kr. 180,000.—

Herzberg Extract from the Books Showing Richard Mayer's Participation in Baumwollbleicherei Herzberg up to End of 1917

1915.		
Dec. 31.	Share of Capital Investment.....	M 20,000.—
" 31.	Share of Machinery and Real Estate Acct...	49,987.49
1916.		
Dec. 31.	Share of Machinery and Real Estate Acct...	37,029.62
1917.		
Dec. 31.	Share of Machinery and Real Estate Acct...	28,982.89
" 31.	Share of Machinery and Real Estate Acct...	29,487.48
" 31.	Transfer of part share from Ludwig Reis..	5,500.—
" 31.	Transfer of part loss of Ludwig Reis share..	3,256.91
		M 174,244.39

[fol. 79] Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1917

1917.					
Jan. 26.	Remittances to Messrs. Nagelstock & Kahn.....	M	100	each M	200
Feb. 28.	do.		100	"	200
Mar. 31.	do.		100	"	200
April 30.	do.		100	"	200
May 24.	do.		100	"	200
July 2.	do.		100	"	200
Aug. 4.	do.		100	"	200
Sept. 6.	do.		100	"	200
Sept. 11.	do.		150	"	300
Oct. 8.	do.		250	"	500
Nov. 6.	do.		250	"	500
Dec. 6.	do.		250	"	500
Dec. 29.	do.		250	"	500
		M			3,900

Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1918

1918.				
Feb. 4.	Remittances to Messrs. Nagelstock & Kahn.....	M 250	each M	500
Mar. 20.	do.	250	"	500
April 2.	do.	250	"	500
" 29.	do.	250	"	500
May 28.	do.	750	"	1,500
June 29.	do.	500	"	1,000
July 30.	do.	500	"	1,000
Aug. 28.	do.	500	"	1,000
Sept. 27.	do.	500	"	1,000
Oct. 28.	do.	500	"	1,000
Nov. 25.	do.	500	"	1,000
Dec. 27.	do.	500	"	1,000
				M 10,500

Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1919

1919.				
Jan. 27.	Remittances to Messrs. Nagelstock & Kahn.....	M 500	each M	1,000
Feb. 24.	do.	500	"	1,000
Mar. 27.	do.	500	"	1,000
Apr. 26.	do.	500	"	1,000
May 26.	do.	500	"	1,000
July 1.	do.	500	"	1,000
[fol. 80]				
July 28.	do.	100	each	1,000
Aug. 27.	do.	500	"	1,000
Sept. 26.	do.	500	"	1,000
Oct. 29.	do.	500	"	1,000
Nov. 28.	do.	500	"	1,000
Dec. 24.	do.	500	"	1,000
				M 12,000

Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1920

1920.				
Jan. 27.	Remittances to Messrs. Nagelstock & Kahn.....	M 500	each M	1,000
Feb. 27.	do.	500	"	1,000
Mar. 29.	do.	500	"	1,000
Apr. 27.	do.	500	"	1,000
May 28.	do.	500	"	1,000
June 22.	do.	500	"	1,000
July 26.	do.	500	"	1,000
Aug. 30.	do.	500	"	1,000
Sept. 24.	do.	500	"	1,000
Oct. 28.	do.	500	"	1,000
Nov. 23.	do.	500	"	1,000
Dec. 21.	do.	500	"	1,000
				M 12,000

Statement of Remittances Made for Account of Richard Mayer to His Relatives During 1921

Jan.	25.	Remittances to Messrs. Nagelstock & Kahn.....	M 500	each M	1,000
Feb.	23.	do.	500	"	1,000
Mar.	29.	do.	500	"	1,000
Apr.	27.	do.	500	"	1,000
May	30.	do.	500	"	1,000
June	24.	do.	500	"	1,000
July	27.	do.	500	"	1,000
Aug.	31.	do.	500	"	1,000
Sept.	26.	do.	500	"	1,000
Oct.	26.	do.	500	"	1,000
Nov.	28.	do.	500	"	1,000
Dec.	21.	do.	500	"	1,000
					M 12,000

[fol. 81] Recapitulation of Remittances Made for Account of Richard Mayer to His Relatives During 1917-1921

1917	M 3,900
1918	10,500
1919	12,000
1920	12,000
1921	12,000
	M 50,400

Unliquidated Assets

A. Land and Buildings of Reis & Company in Germany

Book Value Dec. 31, 1916.....	M 252,037.66
" " Dec. 31, 1917.....	264,834.66
Actual Value April 6, 1917.....	506,408.-
" " Nov. 1, 1922.....	15,000,000.-
Difference between Book Value Dec. 31, 1916 and Actual Value Nov. 1, 1922	M 14,747,962.34
Credit due Richard Mayer for his share of appreciation 20% of M 14,747,962.34 =.....	M 2,949,592.47

Unliquidated Assets

b. Machinery (Including that of Kapok Factory) of Reis & Company in Germany

Book value	Dec. 31, 1916	Dec. 31, 1917
Machinery	M 35,454.-	M 38,297.-
Kapok Machinery	1.-	1.-
	M 35,455.-	M 37,298.-

Actual Value April 6, 1917.....	M 128,620.-
Actual Value Nov. 1, 1922.....	M 12,000,000.-
Difference between Book Value Dec. 31, 1916 and Actual Value Nov. 1, 1922.....	M 11,964,545.-
Credit due Richard Mayer for his share of appreciation 20% of M 11,964,545.- =.....	M 2,392,909.-

[fol. 82] Statement of Richard Mayer's Share in European Assets as per November 1, 1922, by Taking Into Consideration the Dissolution of Partnership as of April 6, 1917

Book Value April 6, 1917		M 1,836,353.80
Difference between Book Value of December 31, 1916 and Actual Value of November 1, 1922 as per attached statement:		
Land and Buildings	M 2,949,592.47	
Machinery including the Machinery of Kapok factory.	2,392,909.00	
		M 5,342,501.47
Difference between Book Value of December 31, 1916 and date of sale:		
Herzberg Plant	M 149,734.95	
Algersdorf (Franzenthal) Plant	78,000.00	
		227,734.95
		M 7,406,590.22

In United States District Court

Minute Entries

This cause was thence continued to the December Term, A. D. 1922, when, to wit, March 14, 1923, a motion was filed by the plaintiff to strike out certain portions of the answer of Richard Mayer, Richard Mayer Company and the Anglo-American Cotton Company.

This cause was thence continued to the March Term, A. D. 1923, when, to wit, March 26, 1923, it was ordered by the court that the first paragraph of defendant Mayer's answer be stricken out.

This cause was thereupon set down for hearing and fully heard by the court on the twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth and thirty-first days of March, A. D. 1923, the Honorable Charles F. Johnson, Circuit Judge, duly assigned to hold said District Court, sitting.

After due deliberation thereon had, to wit, June 16, 1923, an opinion of the court was announced.

This cause was thence continued from term to term to the present [fol. 83] September Term, A. D. 1923, when, to wit, October 2, 1923, the following Final Decree for distribution of funds is entered:

IN UNITED STATES DISTRICT COURT

FINAL DECREE—October 2, 1923

JOHNSON, J.:

This cause came on to be heard for the entry of a final decree on October 2, 1923, and was argued by counsel, and thereupon, upon consideration thereof, it is

Ordered, adjudged and decreed that:

First. The defendant, Richard Mayer, shall forthwith convey to Edwin Reis, Karl B. Strauss and Anny Reis, individually and as trustee for the minor children of Ludwig Reis, all Richard Mayer's rights, title and interest in and to all those assets now or formerly of the partnership of Reis & Company which are located in Germany whether said assets are real estate or personal property. Upon the execution of said conveyance, the defendants, Edwin Reis, Karl B. Strauss and Anny Reis, individually and as trustees for the minor children of Ludwig Reis, shall execute to the said Richard Mayer a release from all claims, demands, causes of action together with a covenant to hold said Richard Mayer harmless from all liability on account of any liabilities of the Manchester branch of said partnership of Reis & Company and shall also execute to the defendant, Richard Mayer, a corresponding conveyance of all their right, title and interest in and to the assets now or formerly of said partnership in the United States whether the same are real estate or personal property except for such interest as they or any of them may have in the sum or sums ordered to be turned over to the Alien Property Custodian under this decree. Upon the execution of such conveyance, the defendant, Richard Mayer, shall execute a release to the German partners from all claims, demands and causes of action.

Second. The defendant, Richard Mayer, shall forthwith pay into the hands of Edward F. McClennen, as an officer of this court, the sum of fourteen thousand dollars ($14,000) as security to satisfy 20 per cent of any judgment that may be recovered in the suits at law [fol. 84] brought by the United States of America against the Richard Mayer Company and against Richard Mayer et als. individually to recover the amount of $62,595.03 paid by the War Risk Insurance Bureau in consequence of the loss of cargo of the steamship Carolyn with interest from October 17, 1916. Any recovery in this case should be paid, 20 per cent by Richard Mayer and 80 per cent by the Alien Property Custodian. If the United States should not prevail in its contention the whole of said sum of fourteen thousand dollars ($14,000) shall be distributed to Richard Mayer, or if any surplus remains after judgment recovered by the government shall have been satisfied, the same shall be distributed to Richard Mayer. The plaintiff, the Alien Property Custodian, is hereby directed to pay 80 per cent of any judgment that may be recovered by the United States in either of said cases, such payment to be made out of the funds turned over to him as the distributive share of the enemy partners, under this decree.

Third. The defendant, Richard Mayer, shall pay forthwith the sum of $157,299.49 to the plaintiff, the Alien Property Custodian, to be held by him as enemy property under the provisions of the Trading with the Enemy Act. This sum represents the surplus after deducting the value of Richard Mayer's interest in the partnership funds from the sum of $828,072.72 for which Mayer is accountable, or $162,899.49, less $5,600, or 80 per cent of the amount of $7,000 heretofore deposited with Edward F. McClennen, as an officer of said court, for the purpose of paying any judgment that may be recovered by Julius Laible in his pending suit to recover an item of interest claimed to be due him from the firm of Reis & Company. Any surplus of said sum which may remain unused after the satisfaction of such final judgment as may be recovered by said Laible shall be distributed 80 per cent to the plaintiff and 20 per cent to the defendant, Richard Mayer.

Fourth. The credits claimed by Richard Mayer for reimbursement of the sums paid by him as premium on a bond to the Alien Property Custodian for counsel fees and other disbursements in [fol. 85] connection with his former suit against the Alien Property Custodian are respectively disallowed.

Fifth. The plaintiff as Alien Property Custodian is entitled out of the money and property in controversy in this cause to the allowance of reasonable fees and expenses for the services herein rendered by Elias Field, Esquire, who appeared as his counsel in this behalf; that the sum of ten thousand dollars is found to be a reasonable allowance for said Elias Field to cover his services in this behalf; and he is authorized to pay said sum out of the funds turned over to him by the defendant Mayer under the terms of this decree.

By the Court.

John E. Gilman, Jr., Deputy Clerk.

C. F. J.

No objection as to form. Edward F. McClennen, Attorney for Richard Mayer.

IN UNITED STATES DISTRICT COURT

NOTE OF APPEAL

From the foregoing final decree, the plaintiff, Thomas W. Miller, and defendant, Richard Mayer, and defendants, Edwin Reis, Karl B. Strauss and Anny Reis, claim an appeal to the United States Circuit Court of Appeals for the First Circuit, and good and sufficient security that they will prosecute their appeal to effect and answer all costs if they fail to make their appeal good having been given by defendants, said cross appeals are allowed accordingly.

IN UNITED STATES DISTRICT COURT

OPINION—June 16, 1923

JOHNSON, Circuit Judge:

In Mayer v. Garvan, Alien Property Custodian et al., 278 Fed. 27, the Circuit Court of Appeals in this circuit affirmed the decree of the District Court in that case and held:

"That the complainant on the dissolution of the partnership with the outbreak of war had a lien on the American assets and their proceeds for what was due him from the partnership on an account- [fol. 86] ing of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting.

"That the plaintiff is entitled to the immediate repossession of all property so seized and the net proceeds arising therefrom; that the plaintiff shall hold possession of the money and property so delivered to him under the terms and provisions of section 8(a) of the Trading with the Enemy Act, and of the rights and duties in respect thereof which are set forth in paragraph 10 of this decree."

Richard Mayer became a member of the firm of Reis & Company in 1913, two members of which, Edwin Reis and Ludwig Reis, were residents of Germany, and one Karl B. Strauss, a naturalized citizen of Great Britain. The substance of the partnership articles is set forth in Mayer v. Garvan, supra; and the contributions of capital stock made by each of the partners and the participation in profits to which each was entitled are stated and need not be repeated here.

The court there held that the partnership was dissolved by the declaration of war between the United States and Germany April 6, 1917, and that after that date all trading or commercial intercourse between American and German partners was unlawful and opposed to the public policy of the United States. It was also held that an agreement alleged to have been entered into February 7, 1917, by the partners in Germany and one Karl Mayer, who purported to act as legal absence trustee for Richard Mayer, and which distributed the firm assets, in the event of war between the United States and Germany, was void.

In accordance with the decree Richard Mayer submitted a statement of an account of partnership affairs as of April 6, 1917, and his distributive share in the same. This was rejected by the Alien Property Custodian, who has brought this bill in equity to determine Mayer's distributive share of all the firm assets.

Edwin Reis and Karl B. Strauss were made parties defendant and also Anny Reis in her own right as widow of Ludwig Reis and as trustee of her minor children. Two corporations which were capi- [fol. 87] talized by Richard Mayer from the assets of Reis & Company were also made parties defendant; but, as they were business instrumentalities of the firm, their assets and liabilities, for the purposes of this accounting, may be considered those of the firm. Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and

as trustee of her minor children, have appeared and filed an answer to the bill, in which they have rendered an account of the European assets of Reis & Company in their possession and subject to the control of the partnership on April 6, 1917, and at the date of the hearing; *and Edwin Reis has testified at length in regard to the same.*

In accordance with the decree in Mayer v. Garvan, supra, the Alien Property Custodian has returned to the defendant Mayer partnership assets of the value of $828,072.72, and he admits himself to be chargeable with this amount. He also admits that the value of the partnership property in his hands on April 6, 1917, was $910,014.07. The value of these assets the Alien Property Custodian claims should be increased by the amount of $633.34, appreciation of a City of Fitchburg note and of other securities, all of which amount to $966.06.

Mr. Edwin Reis brought with him from Germany all the books of the partnership, including books which were withheld from Price, Waterhouse & Company, accountants, who in September, 1920, went to Germany under a decree of the District Court in the former case to state an account between the partners; but upon whose report the District Court then found it could not state an account. The account now rendered by the German partners which states the distributive share of Mayer on December 31, 1916, when the last trial balance was taken before the war, does not differ from that reported by the accountants. The book values given in this trial balance it is admitted represent the actual value of all the property of the partnership except that of the land and buildings and machinery in the Friedrichsfeld plant, which exceeded the book value by M 347,535.34. Among the liabilities stated in this trial balance, however, is the sum of M 956,814.31 set aside for reserves to meet loss on accounts and to assist needy or unfortunate [fol. 88] employees and losses that might be incurred in the transition from war to peace. Mr. Edwin Reis in his testimony claimed that these reserves were completely exhausted in the years 1918, 1919 and 1920; but there is no testimony to show how much of this amount was paid out before April 6, 1917, and I therefore do not include among the liabilities, to the payment of which Mayer's share should contribute, the amount set aside for reserves.

Mayer's interest in the German assets as shown by the books on December 31, 1916, was, in accordance with the report of the accountants and the answer of the German partners, M 2,107,499.89. To this should be added M 69,507.06, 20 per cent of the actual value of land and buildings and machinery over book values; 20 per cent of the reserves, M 191,362.86; and Mayer's share of profits from December 31, 1916 to April 6, 1917, admitted to be M 45,686.31. With these additions I find Mayer's share of net assets in Germany April 6, 1917 to be M 2,414,056.12.

After the declaration of war, which terminated the partnership, there could be no communication between the partners; and whether the German partners held Mayer's share of the European assets as trustees or liquidating partners or whether they went on with

the business as a going business in Germany, using his share of the assets and expecting to account with him at the close of the war as a partner, is immaterial.

The court has found that, according to the German law, the partnership was not dissolved; but by American law it was, and all communication between the German partners and American partners thereafter was illegal. The German partners could not know the exact amount of Mayer's share in all the firm assets because they had had no reports from the Boston branch since the latter part of 1914 or the early part of 1915.

They had sent over to Mayer about $2,500,000 to use in the purchase of cotton waste and an attempt had been made by the American partners to get this into Germany, which had led to seizures of several cargoes by the British Government. Some of this money had been returned to the German partners; but the evidence dis- [fol. 89] closes that between $500,000 and $600,000 was left in the hands of Richard Mayer on April 6, 1917, and had been invested by him in the securities which were seized by the Alien Property Custodian. It does not appear, however, that the German partners had any reliable information upon which they could determine, on April 6, 1917, the distributive share of Richard Mayer in the firm assets. All the firm assets in the United States were seized by the Alien Property Custodian in May and September, 1918, and by decree of the court were returned to Mayer in June, 1922, to satisfy his distributive share upon a partnership accounting.

The courts of the former belligerant countries are now open to the citizens of each and the German partners have submitted themselves to the jurisdiction of this court.

The important questions which lie at the very threshold of determination of the interest of Richard Mayer are: At what date shall the accounting be had? What is the interest of Richard Mayer in all the firm assets and how should it be measured? Should it be measured in the fluctuating currency of Germany, according to the rate of exchange between Germany and the United States at the time of the accounting or at the time when the partnership was dissolved by the declaration of war on April 6, 1917; or should all the property, both American and European, be measured by the same yard stick by taking the intrinsic value in gold of the mark and the dollar?

It is a matter of general knowledge that, as a result of the outcome of the war and economic conditions existing in Germany and the issue of huge volume of paper marks which do not rest upon any gold standard, there has been a tremendous shrinkage in the value of the German mark as expressed in the United States monetary unit of value. Upon March 30, 1917, the nearest date to April 6, 1917, when the rate of exchange was quoted, the value of the German mark in the currency of the United States was about 18 cents. After the declaration of war there was of course no rate of exchange between the United States and Germany and none was quoted until some time in 1919, when the first quotation of the value of the Ger- [fol. 90] man mark in the currency of the United States was 7⅞

cents. Upon July 2, 1921, when the state of war was declared to be at an end by the Act of Congress, the German mark had declined to 1.35 cents; and at the time of the beginning of the hearing before me, March 28, 1923, its value was .0048 of a cent, and it is well known that since that time the rate of exchange has further declined. There is no evidence to show the domestic value of the German mark nor whether the decline in the rate of exchange, as shown in this country, correctly expresses the decline in its value in Germany.

From the share of Mayer in the European assets on April 6, 1917, which I find to be M 2,414,056.12, I find there should be deducted the sum of M 266,432.40, the amount paid by the German partners to the Imperial German Government for taxes assessed on Mayer's partnership interest during the years 1914, 1915 and 1916, and paid by the German partners after April 6, 1917.

I also find there should be deducted the sum of M 50,400, paid by the direction of Mayer to his relatives in Germany. While only a small part of this latter amount was paid to relatives before April 6, 1917, yet, as trustees holding Mayer's interest, I find that they were authorized by him to make these payments. Deducting these two amounts I find Mayer's share of the European assets, on April 6, 1917, to be M 2,097,223.72.

In Stevenson & Sons, Ltd. v. Aktiengesellschaft (1918), A. C. 239, where the partners were English and German and the partnership property was in England and the partnership business was carried on after the declaration of war by the English partner, it was held that the German partner was entitled to his share of the profits attributable to the use of his share of the parntership property as distinguished from that attributable to the skill and industry of the English partner, or interest upon the value of his share from the time of dissolution of the partnership.

It was held in Brown v. Hiatts, 15 Wall. 177, that interest did not run during the war on a debt owning to an enemy, quoting with approval the decision of the Supreme Court of Pennsylvania in Hoare v. Allen, 2 Dallas 102.

[fol. 91] The German partners could not determine the distributive share of Mayer in the firm assets and if they had been able to do so they could not pay any part of his share to him while a state of war continued between Germany and the United States. They are not, therefore, liable for payment of interest upon his distributive share. To assign to his distributive share now his portion of the profits of the business conducted in Germany after the outbreak of the war would be a most difficult task, even if the German partners carried on the business as a going concern, and as now claimed by them, considered Richard Mayer as a partner, although the evidence shows that, without consulting him, they sold all the property belonging to two of the branches conducted by the firm in Germany and they also admitted a new member to the firm.

It would be impossible to calculate the share of the profits which should be equitably assigned to Mayer's share in the German assets or what part of them was attributable to the skill and attention of

the German partners; and under the United States rule the German partners were not liable to pay him interest. Nor does he account for the income from the investments which had been made and which he had collected before the securities were seized by the Alien Property Custodian. The sum which has now been returned to him by the Alien Property Custodian includes income earned while in the custodian's hands, in which both he and his partners share upon distribution.

The firm had a branch in Manchester, England, also; and the evidence discloses that the liabilities of this branch far exceed its assets. But the German partners have stated their willingness to exclude the affairs of the Manchester branch from the accounting and do not make any claims upon Mayer on account of any losses sustained by the firm through that branch.

I therefore find that, for the purposes of this accounting, no part of the profits made by the firm in Germany after the outbreak of the war should be added to Mayer's distributive share. I find that the German partners should account as of April 6, 1917, for Mayer's share at M 2,097,223.72.

[fol. 92] It is agreed that Mayer is accountable for $828,072.72, the amount returned to him by the Alien Property Custodian, the amount which was seized by the Alien Property Custodian having been decreased by certain payments made by the consent of all the parties and also by a depreciation in the value of the stock of the Anglo-American Cotton Company; so that the shares of stock in that corporation, which was seized by the Alien Property Custodian, became worthless because of the great slump in the cotton market and without any fault of the Alien Property Custodian or any other party. It seems to me that it would be impossible and entirely profitless to attempt to trace the liability for any depreciation in the American assets to the fault of any party; and I find, for the purposes of this accounting, that the sum of $828,072.72 represents the value of the American assets for which Richard Mayer should account, and that his share of these assets is 20 per cent or $165,614.54. To this should be added his interest in the European assets which has been stated in marks. The decree in this case must be in terms of American dollars. The American assets are measured in terms of the American gold dollar containing gold of a standard weight and fineness. The German assets should be measured by the same yard stick; that is, by the gold mark, which is equivalent to .2382 of a cent of the money of the United States, both based upon a gold standard.

Counsel have cited in argument cases to show that the rate of exchange between two countries at the time of the breach of the contract is the rule adopted in English courts when judgment is to be rendered there for a debt payable in another country; and have also cited American authorities which hold that the rate of exchange at the time of the trial or of the judgment should govern. There are, however, respectable authorities in the United States which hold that in an action for money due and payable in a foreign country, the rate of exchange should not be taken

into consideration in computing the sum due in American money; but that the par of exchange should govern.

Adams v. Cordis, 8 Pick. 260.

[fol. 93] Alcock v. Hopkins, 6 Cush. 484.

Lodge v. Spooner, 8 Gray 166.

Commonwealth v. Haupt, 10 Allen 38.

Burgess v. Alliance Ins. Co., 10 Allen 221.

Swanson v. Cooke, 45 Barb. 387.

Rice v. Ontario S. B. Co., 56 Barb. 387.

Martin v. Franklin, 4 Johns. 124.

Skofield v. Day, 20 Johns. 102.

Hussey v. Farlow, 9 Allen 263.

Reiser v. Parker, 1 Lowell 262.

Translating the distributive share of Richard Mayer into European assets, M 2,097,223.72 into dollars at .2382 to the mark would make $499,558.69. To this should be added 20 per cent of the American assets for which he is now accountable, $165,614.54, making the value of his distributive share in all the assets of the firm $665,173.23. Deducting this total from $828,072.72 leaves $162,899.49, which I find to be the surplus to be returned by Richard Mayer to the Alien Property Custodian to be held by him as enemy property under the terms of the Trading with the Enemy Act.

The plant in Friedrichfeld has not been sold, but the parties have all agreed that its actual value, as testified to by Mr. Reis and corroborated by the German expert produced at the trial, shall be taken to be true for the purposes of this accounting. The claim of Laible for interest, amounts to $6,475.28, and to meet this $7,000 has been deposited with Mr. McClennen as an officer of the court. Eighty per cent of this amount should be deducted from the share of firm assets to be returned to the Alien Property Custodian and twenty per cent from the distributive share of Richard Mayer. If all or any part of said sum is not required to satisfy the judgment which Laible may recover, then the whole or any unexpended balance is to be paid, eighty per cent to the Alien Property Custodian and twenty per cent to Mayer. There also remains in dispute the claim of the United States for the amount paid by the War Risk Insurance Bureau on account of loss of cargo on the "Carolyn," amounting to $62,595.03, [fol. 94] with interest from October 17, 1916, and claims of Ely, Leiser, Sanft and Heinstein for percentages of profits of the firm. These percentages of profits, so far as they have been earned by German assets, have been paid. The German partners contend that all the American assets or profits are within the meaning of the bonus sharing contracts with these parties. This is denied by defendant Richard Mayer. No demand for any percentage of these profits has been made by these parties upon the American partner, nor upon the Alien Property Custodian, and no action could be maintained by any of them against the Alien Property Custodian, for it is only one who is not an enemy nor ally of an enemy who is authorized to present a claim to assets seized by the enemy Property Custodian. It would be impossible to determine what proportion of the American assets were

profits under the evidence which has been presented, and as no suit can be brought against the Alien Property Custodian by the claimants on that account, I disregard these claims.

Without passing upon the merits of the Government's claim in the "Carolyn" case, I find that, as the cotton which was the subject of the loss in that case was purchased with the partnership funds of Reis & Company, upon its face the claim seems to have enough merit to authorize a decree that $70,000 be impounded with the clerk of the United States District Court to satisfy any judgment that may be obtained by the United States on account of this claim; and that of this amount 20 per cent be taken from the distributive share of Richard Mayer and 80 per cent from that which is to be returned to the Alien Property Custodian; and that, if the United States should not prevail in its contention the whole of said sum shall be distributed to Richard Mayer and to the Alien Property Custodian in proportion to the sums which they have furnished; or, if any surplus remains after judgment recovered by the Government shall have been satisfied, the same shall be distributed to Richard Mayer and the Alien Property Custodian in the same proportion.

The decree should also contain a provision that Richard Mayer shall convey to the German partners all his right, title and interest [fol. 95] in and to all of the assets of the firm in Germany, whether the same are real estate or personal property. The claim of Richard Mayer for interest upon his distributive share is disallowed, as well as his claim for depreciation of the assets while in the hands of the Alien Property Custodian and which was caused largely by the total loss of the value of the stock of the Anglo-American Company. Interest upon the partner's distributive share cannot be allowed until it has been determined. Not only because the distributive share of Mayer had not been determined, but because, after the outbreak of the war payment to him would have been illegal, I find the German partners are not liable for payment of interest on Mayer's distributive share. There is no provision of the Trading with the Enemy Act which would make the Alien Property Custodian liable for payment of interest while the property was in his possession and he has returned it to Mayer with the addition of all income that has been received by him.

Let a decree be presented in accordance with this opinion.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL OF PLAINTIFF, THOMAS W. MILLER—Filed January 23, 1924

The plaintiff Thomas W. Miller, as Alien Property Custodian, being aggrieved by the final decree entered in the above entitled cause on or about the second day of October, 1923, now appears and appeals from said decree to the Circuit Court of Appeals.

The particulars in which the plaintiff considers decree erroneous

are set forth in the assignments of error herewith filed, reference thereto being hereby made.

The plaintiff further prays that a transcript of the record, proceedings, papers and evidence upon which the said decree was based, duly authenticated, may be transmitted to said Circuit Court of Appeals.

Thomas W. Miller, Alien Property Custodian, by His Solicitor, Elias Field, Special Assistant to the Attorney General.

[fol. 96] This appeal is allowed January 23, 1924.

Charles F. Johnson, Circuit Judge, Sitting in said District Court.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR OF PLAINTIFF, THOMAS W. MILLER—Filed January 23, 1924

The plaintiff Thomas W. Miller, as Alien Property Custodian, assigns as the errors in the proceedings and in the final decree entered on or about October 2, 1923, in the above entitled cause, on which errors the said plaintiff-appellant will rely in the prosecution of his appeal from said decree, that the court erred in the following respects:

First. In holding and ruling that Richard Mayer's distributive share in the European assets of the partnership of Reis & Company, which the court found to be 2,097,223.72 marks should be translated into American dollars for the purposes of said decree at the rate of $.2382.

Second. In holding and ruling that Richard Mayer is entitled on accounting to be paid the sum of $499,558.69 as his distributive share in the European assets of the partnership of Reis & Company.

Third. In holding and ruling that the surplus, after deducting the value of Richard Mayer's interest from partnership funds for which he is accountable, is not more than $162,899.49.

Fourth. In failing to find and hold that the surplus to be returned by Richard Mayer to the Alien Property Custodian is not at least $661,584.26.

Fifth. In failing to hold and rule that the present accounting must be stated upon the basis of the present value of the partnership assets or their proceeds, except as to losses due to the fault or neglect of individual partners.

Sixth. In failing to hold and rule that no fault or neglect on the part of individual partners caused the depreciation in the value of the European assets of the partnership since dissolution.

[fol. 97] Seventh. In failing to hold and rule that the European assets of the partnership have depreciated in value because of the depreciation in the value of German currency.

Eighth. In failing to hold and rule that the number of German marks payable to Richard Mayer as his distributive share in the European assets of the partnership must be translated into dollars at the rate of exchange current at the date when the accounting is stated in this proceeding.

Ninth. In failing to hold and rule that the liability of marks 956,814.31 shown on the balance sheet of the partnership on December 31, 1916, for reserves should be included among the liabilities to the payment of which Richard Mayer's share should contribute.

Tenth. In holding and ruling that the defendant Richard Mayer is accountable only for the sum of $828,072.72.

Eleventh. In holding and ruling that it is agreed that Richard Mayer is accountable for only $828,072.72.

Twelfth. In holding and ruling that there is no evidence to show the domestic value of the German mark.

Thirteenth. In failing to hold and rule that the term marks as used in the accounting of the partnership assets in Germany referred to current legal tender paper marks as distinguished from gold marks.

Thomas W. Miller, Alien Property Custodian, by his Solicitor,
Elias Field, Special Assistant to the Attorney General.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL OF DEFENDANT RICHARD MAYER—Filed January 23, 1924

Richard Mayer, the defendant, alleging himself to be aggrieved by portions of the final decree entered in the above entitled cause on or about the second day of October, 1923, does hereby appeal to the [fol. 98] Circuit Court of Appeals of the United States for the First Circuit from said decree in respect to said portions as more fully appears in the assignment of errors which is filed herewith, and prays that this claim of appeal may be allowed and that a transcript of the record, proceedings and papers upon which the said decree was based, duly authenticated, may be sent to said Circuit Court of Appeals.

Richard Mayer, by His Attorney, Edward F. McClennen.

This appeal is allowed January 23, 1924.

Charles F. Johnson, Circuit Judge, Sitting in said District Court.

In United States District Court

Assignments of Error of Defendant Richard Mayer—Filed January 23, 1924

Richard Mayer, the defendant-appellant, assigns as the errors in the proceedings and in the final decree entered in October, 1923, in the above entitled cause, on which errors he the said defendant-appellant will rely in the prosecution of his appeal from said decree, that:

First. The claim of Richard Mayer for reimbursement of the $4,000 paid by him as a premium on a bond to the Alien Property Custodian, given in order to obtain performance by the Alien Property Custodian of the decree of May 4, 1922, in Mayer v. Garvan, should not have been disallowed.

Second. The claim of Richard Mayer for reimbursement of the sums paid by him for counsel fees and other disbursements in prosecuting the claims and the suit of Mayer v. Garvan to recover possession of the property taken by the Alien Property Custodian without justification, should not have been disallowed.

Third. Richard Mayer should not have been held chargeable in a partnership accounting for sums paid by his German former partners after the outbreak of war April 6, 1917, on account of [fols. 99 & 100] personal taxes claimed by the German government against an American citizen, without opportunity for him to question or to resist such payments.

Fourth. Richard Mayer should not have been charged in a partnership accounting for payments to his relatives by his German former partners after the outbreak of war April 6, 1917, when at the same time he was not allowed in such accounting for payments made by him to relatives in the United States of his German former partners.

Fifth. Richard Mayer should have been allowed interest or other compensation for loss of use of the property taken without right by the Alien Property Custodian in 1918, claiming it as the property of Mayer's German former partners, and until its return in 1922.

Sixth. It should not have been adjudged by the decree that the surplus for which Richard Mayer was accountable was $157,299.49 and, in addition, 80 per cent of the fund deposited in the hands of Edward F. McClennen as security in the case of Laible, or that said sums or either of them should be paid over to the Alien Property Custodian.

Seventh. Richard Mayer should not have been required to pay over anything to the Alien Property Custodian.

Richard Mayer, by His Attorney, Edward F. McClennen.

DEFENDANT RICHARD MAYER'S BOND ON APPEAL FOR $250—Approved and filed Jan. 23, 1925; omitted in printing

---

[fol. 101] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL OF DEFENDANTS EDWIN REIS ET AL.—Filed January 23, 1924

The defendants Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children, being aggrieved by the final decree entered in the above entitled cause on or about the second day of October, 1923, now appear and appeal from said decree to the Circuit Court of Appeals.

The particulars in which the said defendants consider said decree erroneous are set forth in the assignments of error herewith filed, reference thereto being hereby made.

The said defendants further pray that a transcript of the record, proceeding, papers and evidence upon which the said decree was based, duly authenticated, may be transmitted to said Circuit Court of Appeals.

Anny Reis, in her own right and as widow of Ludwig Reis and as Trustee for her minor children Edwin Reis, Karl B. Strauss, by their Attorney, Clifford P. Warren.

This appeal is allowed January 23, 1924.

Charles F. Johnson, Circuit Judge Sitting in said District Court.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERROR OF DEFENDANTS EDWIN REIS ET AL.—Filed January 23, 1924

The defendants Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children in connection with their petition for appeal from the final decree entered in the above entitled case on or about the second day of October, 1923, jointly and severally present the [fol. 102] following assignments of error upon which they will rely in said appeal.

The court erred:

1. In holding and ruling that the defendant Richard Mayer is accountable for the sum of only $828,072.72.

2. In holding and ruling that it is agreed that the defendant Richard Mayer is accountable for only $828.072.72.

3. In failing to hold and rule that the defendant Richard Mayer is accountable for the sum of $910,980.13.

4. In holding and ruling that Richard Mayer's distributive share in the European assets of Reis & Company is 2,097,223.72 marks.

5. In holding and ruling that the sum of M 956,814.31 set aside by the defendants above named for reserves should not be included among the liabilities to the payment of which the defendant Richard Mayer's share should contribute.

6. In holding and ruling that the defendant Richard Mayer's share in the European assets of the partnership of Reis & Company should be converted into American dollars at the rate of $.2382.

7. In failing to hold and rule that the term "mark" as used by the German partners in the accounting of the partnership assets in Germany and as used by the witness Edwin Reis in his testimony at the trial refers to the current paper mark as distinguished from the gold mark.

8. In holding and ruling that the marks in question in this case had any intrinsic value in gold at any time after the passage of the German legal tender acts.

9. In holding and ruling that the intrinsic value in gold of the marks in which the defendant Richard Mayer's interest in the European assets has been stated in this accounting is $.2382.

10. In holding and ruling that the German assets should be measured by the gold mark.

11. In failing to hold and rule that the present accounting must be stated upon the basis of the present values of all partnership [fols. 103 & 104] assets or their proceeds, except as to the losses due to the fault or neglect of individuals partners.

12. In failing to hold and rule that the defendant Richard Mayer's distributive share in the European assets of the partnership of Reis & Company should be converted into American dollars for the purposes of said decree at the rate of exchange prevailing at the time said decree was entered.

13. In holding and ruling that the cases cited in the opinion of the trial court with reference to the par of exchange in actions for money due and payable in a foreign country are applicable to an action for accounting.

14. In failing to hold and rule that the claims of Eli Leiser Sanft and Heinstein for percentages of profits of the firm constitute a contingent liability of the co-partners and in failing to make provisions in this decree for the payment of these liabilities.

Edwin Reis, Karl B. Strauss, Anny Reis, in her own right and as widow of Ludwig Reis and as Trustee for her minor children. Clifford P Warren, Attorney.

DEFENDANT'S EDWIN REIS ET AL. BOND ON APPEAL FOR $250.00—Approved and filed Feb. 14, 1924; omitted in printing

---

[fol. 105] IN UNITED STATES DISTRICT COURT

Statement of Evidence—Filed February 18, 1924; Approved February 19, 1924

AGREED FACTS

The following is a condensed statement of the evidence, omitting all parts not essential to the decision of the questions presented by the appeal:

[7, 21] The court took judicial notice of the printed record in the Circuit Court of Appeals in the case of Mayer v. Garvan, together with the final decree entered May 4, 1922, pursuant to the mandate.

[26] The accountant's report on the books of defendant Richard Mayer showed that his balance of net assets in America which went into the partnership of Reis & Company, June 30, 1913, was $49,060.48.

[34] Subject to the objection and exception of the plaintiff, evidence was admitted that after the entry of the decree after mandate instead of the Alien Property Custodian pressing an appeal to the Supreme Court of the United States, an arrangement was [fol. 106] made whereby if the property was turned back and decree made final that Mr. Mayer would give a surety company bond for $400,000 conditioned to perform any such decree as may be entered in this case, with the stipulation in the bond that the amount should not be taken as indicative of the claim of either party; that is the government was entitled to claim that the liability was more than $400,000 and the sum in the bond was not to be taken as any demand by Mr. Mayer that it was any such amount. The bond contained no stipulation as to who should pay the premium on the bond. Mayer paid $4,000 as the premium.

---

[36] W. T. HYNES, called as a witness by the defendants Edwin Reis et al., testified that he was employed in the foreign exchange department of the National Shawmut Bank and that he had with him the records showing the rate of exchange at various times showing the value of German marks [37] in American dollars. That on April 6th, 1917, there was [38] no quotation of German marks. That on the date of trial, March 26th, 1923, marks were worth $48 per million.

[401] Recalled as a witness for the plaintiff, Mr. Hynes testified that the first quotation of German marks after April 6th, 1917, was on July 17th, 1919, when the quotation was 7⅞ cents per

mark and that that was the first quotation between the United States and Germany in marks after the outbreak of war of which the Shawmut Bank had cognizance. That on July 2nd, 1921, the rate fluctuated between 1.34½ cents per mark and 1.35½ cents per mark and that the rate closed at 1.35¼ cents per mark. That on May 4th, 1922, the date of the decree for the accounting, the rates fluctuated between [402] 34½ cents and 34⅞ cents per one hundred marks, or 34⅞ one-hundredths of a cent per mark. On March 30th, 1923, the fifth day of the trial, the rate was $46.50 per million.

On cross-examination by counsel for defendant Mayer, the witness was asked the following questions:

X Q. 1. Do you know what a German mark is?
A. I think so.
X Q. 2. It is the monetary unit of the German Empire equiva-[fol. 107] lent of 23.08 United States cents, is it not?
A. Its gold value is equivalent to that.

This evidence was admitted subject to the objection of the plaintiff that it was immaterial to the issues [404] in the case. The plaintiff excepted to the admission.

On redirect examination, the witness testified that the last quotation of the value of marks before April 6th, 1917, was on March 29th, or March 30th, 1917, when marks were quoted at 71½ cents for four marks, or roughly 18 cents per mark.

[40] Counsel for the government stated that it was the government's theory that for the purpose of this accounting the present value of all assets should be taken. It was stated by the government that if the value of the assets goes back to the date of the dissolution, the defendant Richard Mayer's answer admits assets in his possession amounting at that time to $910,000, but on the basis of the court ultimately accepting the government's theory, it was content to raise no question as to the sum of $828,000, representing the present value of the assets in Richard Mayer's possession.

---

[41] The defendant Edwin Reis, called as witness on behalf of the European defendants, testified that he lived in Heidelberg, Germany, was a member of the firm of Reis & Company; that the other members in April 1917, were Ludwig [42] Reis, Karl Strauss and Richard Mayer. That Ludwig Reis [43] died on January 10th, 1918; that Richard Mayer was employed by the witness as a confidential clerk from 1898 or [44] 1899 on and that he became a partner in the business in 1913 and brought into the firm in the way of assets about [45] 206,000 marks, consisting of merchandise and accounts receivable.

[46] That the only place where the capital investment of the partners was shown on the books was on the private ledger in

Friedrichsfeld; that the branch officers kept records for their own convenience. The records of all the branch offices went together only at Friedrichsfeld, that is to say, the capital amount at Friedrichsfeld and the branch offices was shown only on the books in Friedrichsfeld whereas the branch offices kept books only on their [fol. 108] own [47] account. Inventories were made up from reports sent by the branch offices to Friedrichsfeld and the balance sheets at Friedrichsfeld included the inventories at Friedrichsfeld, Boston and Manchester.

The Richard Mayer Company and the Anglo-American Cotton Company were formed in the office of Reis & Company at Friedrichsfeld. [49] That the Richard Mayer Company and the Anglo-American Cotton Company were founded out of the funds of Reis & Company.

[56] Exhibits A, B and C as attached to the answer of the defendants Edwin Reis et als. were admitted in evidence as "Exhibit I."

Describing the Manchester branch of the business, Mr. Reis testified that the Manchester branch did business in the same way as the Boston office, namely, as a buying and selling agency. After the outbreak of the war with England, the property in Manchester was seized by the English Alien Property Custodian and was sold. The firm obtained nothing out of the assets in England. These assets consisted at the time of the outbreak of the war with England of a plant and some outstanding accounts aggregating about 4,500 pounds in value. On the other hand there were very large debts from the English branch office to [57] English banks for which the Friedrichsfeld office had to stand good. To take care of this indebtness, the firm made a reserve in its books at Friedrichsfeld of about 700,000 to 800,000 marks, but had to pay much more than that. Up to the date of the trial they had paid over 900,000 marks to the clearing office according to the terms of the Treaty of Versailles. Much more remains [58] to be paid. The liabilities of the Manchester branch were carried on the books at Friedrichsfeld, the same as the liabilities of the Boston branch. After the outbreak of the war with England, they did not know any longer how they were standing, but had information from England that the liabilities amounted to about 35,000 pounds in excess of the assets. The accounting had with the English trustee under the terms of the Treaty of Versailles was only a temporary accounting.

[fol. 109] [81] The witness brought over all the books of the partnership up to the year 1918, including the books that were withheld from Price, Waterhouse Co. He also brought over the secret partnership books showing the interest of the several partners, which were not shown to Price, Waterhouse Co. That on April 6th, 1917, the assets of Reis & Company consisted generally of merchandise, cash on hand, cash receivable, and further, a plant in Herzberg, a plant [82] in Franzenthal and a plant in Friedrichsfeld. That the merchandise and accounts receivable were all turned into cash in the year 1917 and that the amount realized from this merchandise and accounts receivable appears on page 1 of Defendant's Exhibit I.

That the plant in Herzberg which was carried on the books at 511,-000 marks was sold during the year 1919 for the sum of 1,260,000 marks. That was the best price they could get at that time. That the plant in Franzenthal, which was carried on the books at 360,-000 marks was sold in the early part of 1920 for [83] 750,000 marks. That the plant in Friedrichsfeld has not been sold, but that it was carried on the firm books on April 6th, 1917, for about 280,-000 marks. That the value of it on the date of trial (March 27th, 1923) was about [85] 18,000,000 marks. That the increase in the value of the Friedrichsfeld plant since April 6th, 1917, comes from the depreciation of the mark.

[87] In stating the value of the respective partners' interest in the account, the witness did not take in the good will of the business because at the outbreak of the war with the United States of America there really was no good will left any more. Business in Germany had nearly come to a standstill and the firm's foreign connections were gone so witness was sure there was no good will to account for.

That the firm of Reis & Company had no fixed arrangement [88] about figuring marks into dollars or dollars into marks. The witness went over the books again two days ago and found that the firm had always used the actual rate according to the rate of exchange then existing. [89] A transcript from the books of Reis & Company showing remittances between the main office and the branches at the rate [fol. 110] of exchange current at the time of each remittance was received in evidence and marked "Defendant's Exhibit IV." Defendant Mayer looked over the books during his stay in Germany in the latter part of the year 1914. [90] That there never was any accounting between Richard Mayer and the partners in Friedrichsfeld. That the European partners did not take over the European assets on the outbreak of the war with America. That the witness kept the assets of the Boston branch on the partnership books until the latter part of 1914, or the early part of 1915, when they ceased to receive regular reports any more. That the share of Richard Mayer of the profits was credited to him annually on the books in the private ledger at Friedrichsfeld. This private ledger is the same thing the witness described as a secret ledger.

[91] After April 6th, 1917, the witness paid out moneys for Richard Mayer to his relatives on the instructions received from him during his stay in Germany in 1914. The amount so paid out amounted to about 50,000 marks. The [92] firm further paid 266,000 marks for taxes. This was a war tax for increase of capital during the years 1914, 1915 and [93] 1916. This was a personal tax on Mr. Mayer's interest in the firm capital and the firm had to pay it for account of Mayer. The bill was made out for Mr. Mayer and was paid for Mr. Mayer and the actual figure was 266,-132.40 marks. [94] The tax was levied in 1916 and was paid on December 10, 1917.

[95] That certain employees were entitled to a share or percentage of the profits of the entire business of Reis & Company including the profits of the branch houses. [96] One of these employees was

Mr. Ely who was entitled to 5 per cent of the profits. The agreement with Ely is dated May 22d, 1913, and was written out by Richard Mayer [98] himself. The agreement was marked in evidence "Defendant's Exhibit VI."

[99] Another employee was Mr. Leiser, who was also entitled to five per cent under a written agreement dated May 29th, 1913, which remained in force until November 30th, 1918. [100] The agreement was marked in evidence "Defendant's Exhibit VII."

[fol. 111] [101] Another employee was Adolph Sanft, who was entitled to one-half of one per cent under an agreement dated May 12, 1913, and which has no fixed duration. The agreement was marked in evidence as "Defendants' Exhibit VIII."

The fourth employee is Mr. Heinstein, who is entitled to a one per cent bonus of all the profits of the firm. This agreement was dated September, 1910, and was for an unlimited [102] time. The agreement was marked in evidence as "Defendants' Exhibit IX."

All four employees were in the actual employ of the firm when Richard Mayer became a partner and continued in the employ of the company and were in such employ on April 6th, 1917, and later. Mr. Mayer was fully informed about all the agreements with the employees for percentages of profits at the time he came into the partnership and prepared Ely's agreement personally.

[103] The witness claims that the distributive share of Richard Mayer in the European assets of the firm as of March 27th, 1923, is about 27,000,000 marks.

On cross-examination by the plaintiff the witness testified that there had never been an accounting between the European partners and Richard Mayer since Mr. Mayer was admitted to the firm in 1913.

[105] That the Boston accounts were kept in Germany until late in 1914 or early 1915 and that after that time remittances were made from Germany to Boston for the purpose of buying linters and cotton waste for the account of the firm. It was for the purpose of buying them for export to Germany. These transactions were during the war and before the entry of the United States into the war. The money was sent over for the purpose of buying these [110] things to be sent to neutral ports. With reference to shipments intended for Germany through neutral ports, the custom was that the papers and shipping documents would [111] eventually reach the witness in Germany. There was never any agreement of any kind between the partners as to the rate of exchange to be employed in interpartnership accounts, nor was there ever any agreement of any kind be-

[fol. 112] tween the partners as to an accounting other than the written partnership agreement.

[112] That in addition to the taxes assessed to Mr. Mayer and paid by the firm, there were separate tax bills to the other partners. That as a matter of tax collecting [113] practice in Germany, if the witness had not paid Mr. Mayer's tax, an officer of the court would have come and [114] seized Mr. Mayer's assets. That the payments to Mr. Mayer's relatives in Germany were on Mr. Mayer's oral request as far as the witness remembers.

[116] The witness prepared the documents marked "Exhibit II," and attached to the defendants' answer as an attempt to comply with the prayer in the plaintiff's bill to furnish a statement as to the value of Mr. Mayer's share in the partnership in Europe. The book value of [123] Richard Mayer's interest in the European assets on December 31st, 1916, was 2,107,449.89 marks. The book value on April 6th, 1917, as shown on page 16, Exhibit C of the defendants' answer, was 1,836,353.80 marks. That figure was arrived at by taking Mayer's share of the whole year's profits for the year 1917 and then taking the proportion of those profits that 96 days up to April 7th, 1917, would [124] represent as a proportional part of the year. Then they subtracted war tax and the payments to Mr. Mayer's relatives. The computation just explained is one shown on page 4 of Exhibit C attached to the answer of the defendants Reis et al. The actual value of Mr. Mayer's distributive share on May 6th, 1917, was not shown on the answer. The actual value of Mayer's interest on the date when the defendants prepared their answer is shown on page [125] 16, Exhibit C. The actual value of the unliquidated assets is shown in the answer as of April 6th, 1917. On page 14 of Exhibit C, the value of the land and buiidings in Friedrichsfeld on that date was 506,408 marks and on page 15 of Exhibit C, the actual value of machinery at Friedrichsfeld on that date was 128,620 marks. These two items cover the total value of the land and machinery at [126] Friedrichsfeld on April 6th, 1917. The share of Richard Mayer in the excess of this actual value over the book [127] value is easily ascertained, 20 per cent of the difference. [fol. 113] The book value for December 31st, 1916, and for April 6th, 1917, [128] was practically the same. The witness has shown the actual value of the plant and machinery at Friedrichsfeld and the sale price of the plants at Herzberg and Franzenthal. The actual value of the Franzenthal and Herzberg plants on April 6th, 1917, were the same as the book values. That the figures the witness has given in so far as they [130] deal with book values correspond exactly with the books. So far as they deal with actual values they are the witness's best information as to the fair market value at [129] the time. The great bulk of the assets on April 6th, [131] 1917, were cash, bills receivable and merchandise. Taking the statement of the assets, it appears that the land and buildings, plant and machinery aggregate only a little [130] over 848,000 marks out of something over 17,000,000 marks. The statement of the assets referred to is the Price, Waterhouse report printed on page 145 of the record for the Circuit Court of Appeals in the case of Mayer v. Garvan, which purports to be an amalgamated balance sheet as of December 31st, 1916, of Reis & Company, Europe, and giving the total assets of 15,282,170.55 marks and that everything below the item marked "Merchandise" on that account were quick assets, which were liquidated within the year 1917. In regard to the assets liquidated during 1917 the witness has continuously carried since April 6th, 1917, on the books, a credit for Richard Mayer in marks of the amount [132] represented by the

book value. The amount was carried in [133] marks in favor of Richard Mayer. The witness produced [134] the private capital ledger of the partnership. This book showed entries purporting to state the share of Richard Mayer in the capital account of the firm for 1916, 1917, 1918, 1919, 1920, 1921 and 1922. The witness testified that Mr. Mayer's interest had been carried on the firm books since April 6th, 1917. The entries [135] up to January 1st, 1916, were made by the witness. Afterwards they were made by a chartered accountant or public accountant. The entries since the year 1916 have been made by a firm of accountants who made the entries in the partners' private ledger. All the entries in this ledger were made on the dates they appear and were made in the regular [fol. 114] course of business. The last entry bears the date of January 1st, 1922, and shows a balance of 2,581,279.95 marks. This book is one of the books withheld from Price, Waterhouse when they were over in 1920.

[138] The witness testified that in giving his evidence as to the values of the German property and of Mayer's interest in the German property both on April 6th, 1917, and [139] today, he had given the value in marks. There is only [141] one kind of marks in Germany. Since the beginning of the war in 1914 there have been no gold marks in circulation in Germany. Witness obtained from the printing office of the State, the government and from the Minister of Interior Affairs, an official paper to make known new [146] laws issued August, 1914, which was received in evidence as "Plaintiff's Exhibit 2". When the witness gave his opinion as to the fair market values of the property of Reis & Company, he meant the fair market price in the kind [147] of marks that were then current, paper marks. When the witness mentioned that there was only one kind of marks he knew as everybody knows here that the mark has depreciated since April 1914. He only wanted to say that according to the German law the mark is still legal tender today.

[149] On cross examination the witness testified that the book value of the interest of Richard Mayer in the European assets of Reis & Company on December 31st, 1916, as shown on page 8 of Exhibit A in the answer of Edwin Reis et al., was 2,107,499.89 marks and that that is the same figure which Price, Waterhouse & Company had for the same interest. There was a difference of 186,000 marks for the interest on April 6th, 1917, which was due to the fact [150] that Price, Waterhouse made their statement as of April [149] 1st and the witness made his as of April 6th. The witness computed the book value of Richard Mayer's interest by taking 20 per cent of 96/365ths of the profit for the year 1917, which was 45,686.31 marks, and adding it to the book value of December 31st, 1916, so that before deducting the [150] liabilities, the book value of Richard Mayer's interest on April 6th, 1917, was 2,153,186.20 marks instead of 2,149,792.90 marks as shown [fol. 115] on Price, Waterhouse & Company's report. The liabilities which the witness speaks of as being deducted are 266,432.40 marks paid for taxes for Richard Mayer personally and 50,400 marks

paid out to the [152] relatives of Richard Mayer in Germany, Page 8 of Exhibit C of the answer of defendants Reis et al. gives the detail of the payments to relatives. 600 marks were paid prior to April 6th, 1917, and the balance was paid after [153] April 6th, 1917. The tax bill of 265,432.40 marks had been rendered at the beginning of 1917 and prior to April 6, 1917, the tax was on the increase of property for [154] the years 1914, 1915 and 1916, using the value of the property owned on January 1st, 1914, as a basis and was levied under a law passed June 21st, 1916. The bill was [155] not paid until after April 6th, 1917. This tax was on the increase of capital engaged in the business and was in addition to the income taxes which had to be paid just the same. The first third of the tax was to be paid three months after receipt of the bill, the next third before November 1st, 1917, and the last third March 1st, 1918. The entire tax was paid by March 4th, 1918. [156] The figures of book values shown in Exhibit C, page 4 of the answer of the defendants Reis et al. took in the actual value with the exception of the plant at Friedrichsfeld. The book value was the actual value with the exception of the plant at Friedrichsfeld.

On further cross examination by counsel for the defendant Mayer, the witness testified that in the first six pages of Exhibit A of the defendant's answer, he had purported to give a balance sheet of the different divisions of the firm and that consolidating the asset side of the first six pages would give total gross assets of 15,802,922.33 marks. On the liability side there appears, taking the items except the items of capital, profit and loss, various sums which total 4,193,413.74. This figure of 4,193,413,74 marks liabilities does not take into account a liability of 120,340.18 marks representing bonuses due employees on German business. Adding that figure to the gross liabilities, we get a total of 4,313,753.92 marks. Subtracting the gross liabilities including bonuses due [fol. 116] from the gross assets, the partners capital balance on December 31st, 1916, is 11,489,168.41 marks as appears on page 7 of Exhibit A of the Reis answer. Cash on hand as shown in the balance sheet meant actual cash in the office. Bonds meant different securities, but does not include any of the investment account items that appear on page 2. Accounts receivable meant ordinary sums due in the course of business.

Included in the liabilities are reserve aggregating 850,000 marks. These consisted of the following items:

1. 50,000 marks reserves for pensions to employees; for war invalids and to help laborers who were in bad circumstances. This reserve was set up December 31st, 1916, and the employees were informed of it. After it was set up and the employees informed of it [174] the firm considered it as a debt. All of this fund was eventually paid to employees and more in addition thereto.

2. 500,000 marks reserves for losses on contracts. 200,000 marks of this fund was set up at the end of 1916, the other 300,000 marks had been set up some time before. This reserve was not a general

one against future possible contract liabilities, but was set up against certain specific contracts to furnish merchandise which the firm had undertaken at low [175] prices out of the war time and which had to be fulfilled after the war. At the time the reserves were set up the selling price was already much less than the cost to the firm. It was against these losses in fulfilling orders that they were obliged to set up a reserve. This reserve was used up in 1918, 1919 and 1920.

3. 300,000 marks reserves against losses which would occur in the transition period after the war. It was a reserve to meet expected changes in value occurring out of risks from change of war time into peace times. It was a reserve that was allowed to be [176] set up by the German law. It was the opinion of the firm and the opinion of their chartered accountants that it was necessary to make these reserves on the firm balance sheet. In fact it turned out later that the reserves were much too [177] small.

[fol. 117] The accounts did not include the assets of the Manchester branch because the firm did not receive anything out of those assets. They were not shown on the books as assets. The English public trustee took in his hands and kept the 4,500 pounds that were realized from the sale of the assets of the Manchester branch.

[183] On April 6th, 1917, the European partners did nothing by way of separating Richard Mayer's assets from the assets of the firm or the other partners, but carried him on as a partner and the accounts showed what was due him at any time. They did not take and put aside any assets as separate assets of Richard Mayer on April 6th, 1917.

[184] On April 6th, 1917, the business that Reis & Company was engaged in in Europe was the same as before and that business has been carried on without any break up to today. They continued the partnership as if Richard Mayer was still a partner. They continued to use the assets in the ordinary course of a going business as if Mr. Mayer was still a partner, as they considered him.

[187] The partners in Reis & Company at the present time are Karl Strauss, Alex Leiser, Edwin Reis and Richard Mayer, who is still kept on the firm books as a partner and is still in Handel's register as a partner. What he really is now the witness does not know. That Mr. Leiser was taken into partnership from the first of January, 1920, and Mr. Mayer's brother signed his new partnership agreement [188]. Witness did not consult Richard Mayer himself about taking Mr. Leiser in.

[189] Since April 6th, 1917, the firm always kept a separate amount in marks in the bank which was used as a credit [199] for the partnership and has used the plant. The Herzberg plant was sold before Leiser became a member of the firm. The Franzenthal plant was sold a few months later. In 1917, after April 6th, the firm bought only a small amount of merchandise. The cotton waste business was at a standstill because it was forbidden to deal in cotton waste. At that time the government had seized all cotton waste. The cotton [fol. 118] waste which the firm had on hand had already been seized at that time and was in charge of government officials. The govern-

ment moved all the cotton waste out of their plant in the course of the year [191] 1917. That the firm received from the government certain quantities of cotton waste for the purpose of the cleaning waste department.

[192] In collecting the accounts receivable from the debtors after April 6th, 1917, the firm made no distinction between the accounts that had arisen before that date and those that arose afterwards. The firm always kept a large balance, especially all sorts of money in marks, with the intention of always having those marks ready for any purpose.

[193] That all assets in Germany were in the hands of the partnership on April 6th, 1917. In the course of the years 1914 and 1915 Reis & Company caused to be sent over from Europe to Richard Mayer nearly $2,500,000.

[194] When Richard Mayer became a partner in 1913 he sent over a statement purported to be taken from his books here in Boston. The figures on the statement were in dollars. The first entry on page 41 of the private ledger under the heading of "Richard Mayer" shows that he was credited on July 1st, 1913, as follows: "Per investment, according to inventory, marks 206,054.02."

[205] As long as there were normal exchange rates for the mark, the partnership used for the convenience of the bookkeeping, for the dollar, 4.20, for francs 18 and for the pound, witness thinks, it was 20.14. That was used as a matter of convenience as long as the mark [206] exchange rate was a normal one. Before April 6th, 1917, [207] this custom had changed somewhat. The firm never reckoned up their books up to November 30th in any year after 1913, including a statement of the Boston business, because the reports stopped coming from Boston sometime in 1914. The state of the business in Boston did appear on the books on November 30th, 1913. Mayer reported his sales and [208] receipts in the usual way. He reported in dollars and probably those accounts were carried to the firm accounts in marks at 4.20 because that was the usual way. The [fol. 119] firm took the figure 4.20 because they wanted the round number. 4.20 was more convenient to take than 4.18 or 4.21, and 4.20 was about the average of the exchange rate. They took round numbers for all the exchange rates. It was about the normal exchange rate in prewar times. The witness never looked for the question of the equivalents of the German gold mark and the United States gold dollar. Witness is a business man, not a scientific man. For English pounds the firm used on its books 20.40 as long as it was the actual rate. The report of Price, Waterhouse shows that at the end of 1917 they changed the rate. When Ludwig Reis died the firm used the balance sheet of December 31st, 1917, to figure from according to the partnership agreement and paid out all the assets, with the exception of the American partnership share, which was left open until the accounting should be possible.

[213] On redirect examination the witness identified [214] and put in a list of valuations of Richard Mayer's share as of April 6th, 1917 and March 6th, 1923, marked respectively "Defendants' Exbits XII" and "XIII."

The reserves referred to in witness' previous testimony were made

partly in the course of the year 1916 and partly December 31st, 1916, and were made after consulting with chartered accountants.

[219] About $2,500,000 was sent over to Richard Mayer by Reis & Company for the purchase of cotton. A very large part of this was not needed and they cabled continuously for the return of the money not needed, which the witness thought amounted to more than $1,000,000. Only $300,000 was returned, and this in 1915. This $300,000 when returned was entered upon the firm's books in marks at the actual rate of exchange prevailing then, which was a higher rate than 4.20.

[220] The balance of the excess money in Richard Mayer's [221] hands amounted to about $600,000, which they demanded of Mayer continuously but never received.

[220] The following concession was made by the attorney for the defendant Richard Mayer:

"It undoubtedly is the fact that this great quantity of money [fol. 120] came over and that a certain amount was used for the purchase of cotton, that a certain amount was returned and that left a substantial amount still to be accounted for, and that balance is a part of these assets in America."

[223] When Richard Mayer was in Germany in the summer of 1914 he saw the entry of 206,054.02 marks in the private ledger. This entry was made July 1st, 1913, and represented his contribution to the firm assets.

[226] The witness stated that Richard Mayer approved of the firm carrying him on the books as a partner. He knew that Richard Mayer approved of this through the contents of letters sent by Mayer to his brother in Germany.

[227] There was about half a dozen such letters which the brother Karl Mayer showed the witness, who also recognized [255] Richard Mayer's handwriting. All the balance sheets up to and including that of December 31st, 1919, were shown to the defendant Richard Mayer's brother, Karl Mayer.

[230] Some time between July and October, 1914, the firm changed from the exchange rate of 4.20 in making remittances to America. This change was made as soon as the actual rate changed.

[238] Witness testified that since April 6th, 1917, down to date, the European partners have continued in the form of cash on deposit in banks a sum sufficient to pay out the capital interest of Mr. Mayer as shown by the books. The European partners still have such an amount in the form of cash in German marks. With reference to the accounts receivable, which were collected in the regular course of business, the average credits were about thirty days.

[254] A general power of attorney from Richard Mayer to his brother, Karl Mayer, dated September 28th, 1922, was marked in evidence "Plaintiff's Exhibit 3."

[288] A qualified expert and official appraiser who had examined and was familiar with the tangible property of Reis & Company in Germany was present but did not testify since it was stipulated by all [fol. 121] parties that he was to be taken as to have testified to the same values which the defendant Reis had testified to.

[289] JULIUS LAIBLE, called as a witness by the defendants, Reis et als., testified that he lived at 47 Prince Street, Jamaica Plain, and that he had been employed by Reis & Company before Mr. Mayer became a partner, as manager of various departments. After Mr. Mayer joined the firm, witness was office manager for Reis & Company, Richard Mayer Company and the Anglo-American Cotton [291] Company. At the time Mr. Mayer joined, the business of Reis & Company over here was conducted as a branch of Reis & Company in Germany. In other words it never showed a profit. If we bought anything Reis & Company bore the cost of merchandise. If we sold anything Reis & Company in Germany got the benefit of the sale price. That system was continued after Mr. Mayer joined and witness did not believe it ever stopped. Before the outbreak of the European war, money would be sent from Germany to Reis & Company, Boston. After that it was sent under various names. For instance, Wypelow & Company, Richard Mayer Company. Something over $2,000,000 was sent over [292] before outbreak of the war with America. In consequence of various requests, $300,000 was returned to Germany. Further requests were made thereafter but the witness does not believe further remittances were made. Richard Mayer consulted with the witness at times with reference to those requests for remittances. These requests were mad by cable and by mail and in the course of the witness's personal interview, which he had with the European members of the firm in the fall of 1915. They criticised affairs over here for not having sent them so much money. They wanted to know why there was so much delay in sending the $300,000. They wanted to know how much more they might expect. A further request was made in the spring of 1917 by Mr. Strauss, one of the partners. This request the witness believes was at the very end of March, 1917, just a few days before the declaration of war.

[297] Mayer had a talk with the witness at one time after the property was seized and asked the witness if he knew of an exchange [fol. 122] rate fixed in the partnership agreement. Witness said no. He said if he remembered correctly the rate was fixed at 4.20. Witness said that was quite possible. After the partnership agreement arrived here from Germany, during 1919, Mayer came and told the witness that he was much disappointed to find that the exchange rate was not provided for in the partnership agreement, nor was the interest rate provided for, as he had figured in the partnership.

[299] On cross examination by the plaintiff, the witness testified that in August, 1917, shortly after the declaration of war between tthe United States and Germany, witness had a conversation with Richard Mayer in which Mayer stated that Mr. Murchie recommended to him to make an investment in some gasoline stock, if there were any further idle funds to spare. Mayer asked the witness to look into the matter and to be present at a conference with the promoters of that gasoline stock, which took place a [300] day or two after at Mr. Mayer's office. At this conversation Mayer asked the witness how he could go into this speculation or investment as far as the partnership was concerned and witness told Mayer that he could not use the partnership funds for any such purpose

because the partnership agreement prohibited it. Witness pointed out to Mayer that if he went into it he did so at his own risk. If it resulted in a gain, he would have to submit the matter to his partners later on, explaining what he actually did, and possibly divide the gains with them. On the other hand witness pointed out to him that if it should result in a loss, he also would have to lay the cards on the table and say, "Here, gentlemen, here is what I did. I had hoped that it would turn out right, but it happened to turn out wrong. If you wish to charge me with the entire loss, you may do so. If not, I will accept anything which is agreeable to you." Mayer nodded his head in reply to this statement. Later witness was present at a conference between Mayer and the promotors of the gasoline stock at which the purchase was made and the price was agreed upon subject to Mr. Murchie approving the [302] details. Later Mr. Mayer told witness about Mr. Murchie [fol. 123] having approved of it.

From time to time thereafter witness had talks with Mr. Mayer, and Mr. Mayer and Mr. Murchie regarding Mayer's position with respect to the partnership assets here in Boston. Mayer took witness along to Mr. Murchie's office at different times. It was a question of making sure whether we were safe as far as Washington was concerned. Mr. Murchie had made various trips to Washington to find out what Washington's attitude would be in regard [303] to this property. There was talk about trying to get certain statements from the German partners which would help Mayer in his efforts to get the property back. This was after the Alien Property Custodian had taken possession of the property. In the latter part of 1918 right after the armistice, there was a conversation with reference to endeavoring to get evidence from the German partners which would help Mayer in his claim against the Government.

[327] The Richard Mayer Export Department was the name under which Reis & Company's export business, as distinguished from the domestic business of Richard Mayer Company, was being conducted.

[335] From April 6th, 1917, up to the time the property was seized by the custodian, the Boston business was carried on the same as before. The Anglo American Cotton Company, of which the witness was the manager, was not liquidated but went ahead with its business. The Richard Mayer Company was not liquidated, but that at some time after the outbreak of the war Mr. Mayer expressed a wish that they should carry this merchandise so that it would not appear to the Government officials here, and similar officials, that they were carrying too much cotton over here to be shipped after the end of the war to Germany. Apart from that statement in regard to reducing the amount of cotton stock, not a word was said about liquidating. The books were not closed in any way to the witness's knowledge on April 6th, 1917. The export department had stopped doing export [336] business in March, 1915. On April [fol. 124] 6th, 1917, no change was made in the way the affairs of the export department were handled. Between April 6th, 1917, and the time the property was taken over by the custodian, witness knows of no attempt being made by Mr. Mayer to liquidate the assets

and state an account, showing the interest of the German partners in it.

[336] On cross-examination by counsel for the defendant [338] Mayer, witness testified that since October, 1921, he had been in more or less continuous communication with the German house. Witness's exact position at the outbreak of the war, April 6th, 1917, was as manager of the Anglo American Cotton Company, and his salary was paid by that [339] company. Witness received no salary from the Richard Mayer Company after January 1st, 1917, nor from the export department after that date. The active business with which the witness concerned himself after April 6th, 1917, was principally the business of the Anglo American Cotton Company, but not confined to it. Ninety-eight out of the total number of 100 shares in that company had been issued in the name of the witness, but he endorsed it and Mr. Mayer took the shares from him during the fall of 1915.

[343] Witness went to Germany in November, 1914, and returned in February, 1915, and he again went to Germany in September, 1915, returning in April, 1916. In the latter part of 1915 witness had a conversation with Ludwig Reis in which witness said that Mr. Mayer did not wish them to [344] go in so heavily in the business which they were carrying on at that time and not to forget that we were at war. It might include a lot of risk. Ludwig Reis replied, "I can see it. The stuff is getting into Mayer's head. I noticed that for some time past. He does not seem to want to work any more. I thought so from the beginning. You can tell him to go where he came from and keep his little business over there, but we will continue over here same [345] as before." Witness told Mayer about this conversation a few weeks after his return, probably along in the middle of 1916. Witness told Mayer immediately upon landing in New York that Mayer had earned quite a lot of money since the witness had seen him last, through [fol. 125] the operations of the German firm. Mayer replied that he had heard of this big amount of money and asked whether his share would [346] equal the then existing assets over here. Witness and Mayer started figuring the then prevailing rate of exchange and arrived at the point that his share would equal the assets over here and possibly more. The rate [352] of exchange was figured roughly at five. It was about 5.10 or 5.15. When witness told Mayer about what his share in the German assets came to, he meant that the whole property was about 15,000,000 marks over there. [353] Witness never saw the balance sheet and he was merely repeating what he had heard. That when he figured out with him his share at the then existing rate, it was something like between $600,000, and $700,000.

[370] The Anglo American Cotton Company continued right on actively up to the time the Alien Property Custodian seized it and thereafter, and the witness continued as the manager of that company until within a few weeks before it stopped doing business. The witness ceased his connection with that company in the early part of May, 1921.

[373] The Richard Mayer Company was purchasing new merchandise after April 6th, 1917, on a ratio of about 30 per cent less than it was purchasing during its biggest year, which [375] was 1916.

The domestic department did not after the early part of 1917 turn its money into securities as distinguished from business assets except that it bought some liberty bonds which it felt its duty to buy.

[377] On redirect examination the witness testified that he was not told by Ludwig Reis or any of the other partners to report the conversation that he had in the year 1915 to Mr. Mayer. In fact not all the partners over there knew about it. They were only there off and on. They were not all there when the case was explained all the way through.

Witness did not have any competent information about the value of the Germany assets. He simply heard an estimate of profits for the years gone past. He thinks that they had earned something like 6,000,000 marks the preceding year. He seemed to have the [fol. 126] idea that they almost had 10,000,000 marks, 8,000,000, whatever it was, and he arrived at some figure like 15,000,000 marks.

With reference to witness's conversation with Mr. Mayer as to the agreement that was reached to tell a certain kind of story, that was not all agreed upon in one conversation. Mr. Mayer came back a few days afterwards and did not like the idea and said in substance, "We probably won't get away with it."

Witness received a telegram from Richard Mayer on January 18th, 1921, which stated that he was not thinking for a minute of liquidating the business of the Anglo American Cotton Company. The telegram was marked in evidence "Plaintiff's Exhibit 15".

Counsel for the German defendants consented that if there should be any question about the plant in Friedrichsfeld, the German defendants will sell it between now and the time of the decree or at any required time and turn the cash amount into court.

[378, 379, 380] Richard Mayer made remittances to L. Stadeker, a relative of Edwin Reis, at the request of Edwin Reis. These payments were carried on the books as accounts receivable from Stadeker. These payments continued after the outbreak of the war with America up to August 30th, 1918. The schedule of these payments is in evidence as "Defendant's Exhibit" marked with the letter "I". Counsel for Edwin Reis admitted that these payments were actually on account of Edwin Reis.

Offers in Evidence

Exhibits

During the trial the following exhibits were received in evidence:

Plaintiff's Exhibits

1. Letter of June 23, 1922, Elias Field to Edward F. McClennen with enclosure.

2. Document, August, 1914, issued by Minister of Interior Affairs, Germany.

3. Copy, September 28, 1922, general power of attorney.
[fol. 127] 4. Report of Haskins & Sells, accountants, on the Richard Mayer Export Department, October 10, 1914 to May 31, 1918.
5. Report of Haskins & Sells, accountants, on the Richard Mayer Company, October 10, 1914 to May 31, 1918.
6. Report of Haskin & Sells, accountants, on the Anglo American Cotton Company.
7. Photostatic copy of insurance policy on cargo of Steamship "Carolyn."
8. Photostatic copy, affidavit, Mr. Richard Mayer.
10. Assessment of securities by Lee, Higginson & Company.
11. German original and translation of the private ledger account of Richard Mayer on the books of Reis & Company (7 sheets).
15. Telegram, January 18, 1921, Richard Mayer to Julius Laible.

Defendants' Exhibits

I. Exhibits A, B and C of Exhibit 2 of answer of defendants Edwin Reis et als.
II. For identification page 1-8 of answer of defendants Edwin Reis et als.
III. Receipts and statements of account concerning Manchester house.
IV. Transcript from books of Reis & Company showing rates of exchange.
V. Tax receipt for taxes paid for Richard Mayer.
VI. Contract, May 22, 1913, Reis & Company and Gustaf Ely.
VII. Contract, October 13, 1910, Reis & Company and Leiser.
VIII. Contract, May 12, 1913, Reis & Company and Adolph Sanft.
IX. Agreement, September 1910, Reis & Company and Heinstein.
X. Letter of November 3, 1914, signed "Dick," from Richard Mayer to Reis & Company in English.
XI. Letter of November 3, 1914, signed "Dick," from Richard Mayer to Reis & Company in German.
[fol. 128] XII. Statement of actual value of Richard Mayer's share in the European assets of Reis & Company of April 6, 1917.
XIII. Statement of actual value of Richard Mayer's share in the European assets of Reis & Company on March 26, 1923.
XIV. Telegram, January 3rd, 1917, Richard Mayer to Edwin Reis.
A. Letter, June 26, 1922, Edward F. McClennen to Elias Field.
B. Letter, November 15, 1920, Richard Mayer to Karl Mayer.
C. Letter, March 6, 1921, Richard Mayer to Karl Mayer, translation attached.
D. Letter, July 4, 1919, from defendant Strauss to defendant Mayer beginning "My dear Dick," signed "Fred."
E. Letter, August 10, 1919, from defendant Strauss to defendant Mayer.
F. Letter, March 9, 1920, defendant Strauss to defendant Mayer.
G. Letter, November 4, 1920, defendant Strauss to defendant Mayer.

H. Letter, September 22, 1921, defendant Strauss to defendant Mayer.

J. Balance sheet, April 1, 1917, Richard Mayer Company.

K. Balance sheet, April 1, 1917, Export Department, Richard Mayer Company.

L. Balance sheet, April 1, 1917, Anglo-American Cotton Company.

M. Balance sheet, May 31, 1918, Richard Mayer Company.

N. Balance sheet, May 31, 1918, Richard Mayer Export Department.

O. Balance sheet, May 31, 1922, Richard Mayer Company.

P. Balance sheet, June 1, 1922, Anglo-American Cotton Company.

Q. Balance sheet, June 1, 1918, Anglo-American Cotton Company.

The portions of such exhibits material to the questions raised on this appeal are herewith reproduced as part of this condensed statement of the evidence.

[fol. 129] It is agreed by the parties that the original exhibits may be transmitted to the Circuit Court of Appeals and referred to as part of the evidence at the hearing of the appeals in this case.

Exhibits to be reproduced as part of this condensed statement are as follows:

Plaintiff's Exhibit 1, omitting the enclosure, which is already printed, a copy of said enclosure being annexed to the answer of the defendant Mayer.

A portion of Plaintiff's Exhibit 2, including statutes numbered 4434 and 4448.

Plaintiff's Exhibit 3.

Plaintiff's Exhibit 4.

Plaintiff's Exhibit 5.

Plaintiff's Exhibit 6.

Plaintiff's Exhibit 11, original and translation.

Defendant's Exhibit IV.

Translation of Defendant's Exhibit V.

Translation of Defendant's Exhibit VI.

Translation of Defendant's Exhibit VII.

Translation of Defendant's Exhibit VIII.

Translation of Defendant's Exhibit IX.

Defendant's Exhibit XII.

Defendant's Exhibit XIII.

Elias Field, Special Assistant to the Attorney General, Attorney for Plaintiff. Edward F. McClennen, Attorney for Richard Mayer, Richard Mayer Company, and Anglo-American Cotton Co. Clifford P. Warren, Attorney for Defendants Edwin Reis, Karl B. Strauss, and Anny Reis, Individually, and as Trustee for the minor Children of Ludwig Reis.

[fol. 130] Approved: Charles F. Johnson, U. S. Circuit Judge.

PLAINTIFF'S EXHIBIT 1 (2 Papers)

Brown, Field & McCarthy, 927 Oliver Building, 141 Milk Street, Boston, Massachusetts

June 23rd, 1922.

Edward F. McClennen, Esq., 161 Devonshire Street, Boston, Mass.

Mayer vs. Alien Property Custodian

DEAR MR. MCCLENNEN: I am in receipt of a letter from the Alien Property Custodian directing me to return to you the enclosed document and advise you that the Custodian cannot acknowledge the receipt thereof as a compliance with the requirements of the decree or as a performance of the condition of Mr. Mayer's bond.

The Custodian points out that it is manifest that the proposed accounting can in no sense be regarded or accepted as a compliance with the requirements of the decree. Mr. Mayer's attempt to avail himself of the Price, Waterhouse Report as a determination of the value of the German assets is clearly unwarranted under Judge Bingham's finding that an account could not be stated on this evidence. His attempt to ignore the actual rate of exchange and to base his accounting on the artificial figure of 4.20 marks to the dollar is without justification, particularly in view of Judge Bingham's express finding that the evidence did not warrant the finding of an agreed ratio of conversion in accounts between the partners.

Mayer's claim to charge the Custodian with interest upon the partnership funds held by him is so clearly untenable that discussion thereof would be unprofitable. If it is necessary to have an examina- [fol. 131] tion of the records and data of the partnership by certified public accountants under the joint supervision of attorneys for Mayer and for the government, it is the disposition of the Department to co-operate in every way with Mr. Mayer in relation to the same. It is assumed that Mayer would now be in a position to obtain necessary information and data from his former partners to enable him to determine the true state of the accounts and render an accounting in accordance with the facts as to the value of the German assets.

Very truly yours, Elias Field.

F/K. Enc.

[MEMORANDUM.—Copy of enclosure is here omitted as the accounting is annexed to the answer of defendant Mayer. James S. Allen, Clerk.]

PLAINTIFF'S EXHIBIT 2

Extract from a Translation of Plaintiff's Exhibit 2

* * * * * * *

Statute Concerning the Modification of the Mint Law

(No. 4434)

Aug. 4, 1914.

We, Wilhelm, by the grace of God, German Kaiser, King of Prussia, etc., order in the name of the Empire, by consent of the Federal Council and the Reichstag, the following:

1

Until further notice the rules of paragraph 9 of the mint-law of June 1, 1909 are being modified to the effect that imperial treasury certificates and bank-notes can be issued instead of gold coins.

2

The Federal Council is authorized to determine the time when the rules mentioned under 1, are to become valid again.

3

This statute becomes valid on the day when proclaimed.
In witness whereof our own signature and affixed imperial seal.
Signed, Berlin Palace, August 4, 1914.

Wilhelm. Delbruck. (L. S.)

* * * * * * *

[fol. 132] Statute Concerning Imperial Treasur*ed* Notes and Banknotes

(No. 4448)

August 4, 1914.

We, Wilhelm, by the grace of God, German Kaiser, King of Prussia, etc., order in the name of the empire, by consent of the Federal Council and the Reichstag, the following:

1

Until further notice the Imperial Treasury notes are legal means of payment.

2

Until further notice Imperial Treasury is not obligated to redeem the Imperial notes, and the Reichsbank is not obliged to redeem its certificates.

3

Until further notice the private banks are entitled to use Reichsbank certificates—for the redemption of their own notes.

4

The Federal Council is authorized to set a date for the invalidation of clauses #1, 2 and 3.

5

With reference to clauses #2 and 3, this Act goes into effect July 31, 1914. As for the remaining clauses, the Act goes into effect when proclaimed.

In witness whereof our own signature and affixed imperial seal.
Signed, Berlin, Palace, August 4, 1914.

Wilhelm. Delbruck. (L. S.)

* * * * * * *

PLAINTIFF'S EXHIBIT 3

Translation

General Power of Attorney

Boston, Mass., Sept. 28, 1922.

I herewith appoint merchant Karl Mayer, Rohrbach, District of Heidelberg, as my General Attorney, and authorize him to represent [fol. 133] me in all deeds, to buy and to sell land, buildings, merchandise, and also in money matters for courts, registry of deeds, banks, to place and cancel mortgages, to open and close bank accounts in my name and stead, in brief, I authorize Karl Mayer, in my name, to do everything which I would do, as if I was in his place, and I acknowledge and ratify herewith every act and deed of said Karl Mayer beforehand, as executed and done by myself.
Boston Sept. 28th, 1922.

PLAINTIFF'S EXHIBIT 4

Haskins & Sells,

Certified Public Accountants, 30 Broad Street, New York

Cable Address: "Haskells"

New York, Chicago, Detroit, St. Louis, Cleveland, Baltimore, Pittsburgh, San Francisco, Los Angeles, Seattle, Denver, Atlanta, Watertown, London

New York, August 3, 1918.

Alien Property Custodian, Bureau of Audits, Washington, D. C.

Trust 19975: Reis & Company, Heidelberg, Germany. Report 21703: Richard Mayer Company—Export Department

DEAR SIR: Pursuant to engagement, we have made an examination of the books, accounts, and records of the Richard Mayer Company—Export Department, 200 Summer Street, Boston, Massachusetts, and submit herewith nine pages of comments and the following described exhibits and schedules:

Exhibit "A"—Statement of Assets and Liabilities and Balance of Capital Accounts, May 31, 1918.

Schedule No. 1—Statement of Investments.

2—Capital Accounts.

Yours truly, Haskins & Sells.

Received at New York Office.

[fol. 134] Richard Mayer Company—Export Department

Comments on the Examination

Historical

Reis and Company of Heidelberg, Germany, did business in Boston from about 1902, to about 1916.

The books, records, and correspondence of Reis and Company are said to have been removed and destroyed during the summer of 1917.

It is claimed that the Boston business of Reis and Company was wound up in 1915 or 1916, by what process we are not informed.

Mr. Julius Laible says that they were unable to obtain credit and in fact were so afraid of attachment that the funds of the Company, the total amount being something over $10,000.00, were transferred to the Beacon Trust Company under the name of Laible and Rowe.

From these funds there was withdrawn $10,000.00 on June 28, 1915, by check made payable to O. S. Bauer. The check shows that Bauer withdrew the amount in cash. The cash was then paid over to Julius Laible who deposited it with the First National Bank,

Boston to the credit of Anglo-American Cotton Company on whose books it was credited to the Capital Stock account. Julius Laible informed us that this method of procedure was adopted because Bauer was so well known that it was easy for him to have checks of large amounts cashed and also that they did not want anyone to know of the relationship between the Anglo-American Cotton Company and the "people upstairs."

We are informed that O. S. Bauer was manager for Messrs. Staudt and Company, 184 State Street, Boston, Massachusetts.

Although it is claimed, that Reis and Company's business in Boston was wound up and all records destroyed, we are of the opinion that the Richard Mayer Company—Export Department, is, in fact, the successors.

Our examination of the purchase records of the Export Department—which, we had great difficulty in obtaining, as they had been [fol. 135] concealed under waste samples, in the Sample Room of the Anglo-American Cotton Company—reveals the fact, that the contracts existing between linters manufacturers and Reis and Company, were being carried out by Richard Mayer Company—Export Department.

It is a noticeable fact that all of the records of Reis and Company have disappeared and that the records of the Richard Mayer Company—Export Department, have been mutilated in such a manner as to render them almost useless.

When we inquired for the books of the Richard Mayer Company—Export Department there was produced for our inspection a package of loose sheets, consisting of ledger sheets and two and three column journal sheets. These sheets at one time represented a complete set of books consisting of ledger, journal, cash books, domestic sales record, and purchase book. The sheets had been cut so that the titles of the accounts and in many instances the date column had been removed and destroyed.

By a constructive process we have succeeded in building up what represents a more or less complete set of books.

We secured a loose leaf binder and have placed therein the 120 ledger pages presented to us, which have been marked by us for identification, with red figures in the lower right hand corner.

The new ledger is made up as follows:

Merchandise and Proprietary Accounts	A1 —24
Operating Accounts	B25—50
Personal Accounts	C51—120

The headings of the pages representing the cash transactions, had also been cut off so that the dates (months and years) were destroyed. These pages had been torn from a three column bound book.

As marked by us for identification, these pages from 8 to 91 apparently show the cash transactions from December 1, 1914, to February 5, 1917.

The pages which would have been numbered 1 to 7 inclusive, had

a complete sequence of reference numbers been maintained on the ledger sheets, are missing.

[fol. 136] We also found three loose pages—which we have marked for identification on the used sides as 150, 151, 152, 153—upon which the particulars of the transfer of the cash received on account of seizures made by the British authorities and the remittance to "Wipeclo Mills" entered.

Forty-four loose pages of journal entries have been marked by us as 1 to 44. These pages had been torn from a bound two-column journal and all headings and dates had been removed.

The entries as identified by us apparently cover the period from December, 1914, to September, 1916.

Loose pages, torn from a two-column bound book with headings and dates removed, marked by us as S1 to S19, apparently cover all the domestic cotton sales from January, 1915, to July, 1916.

Four loose pages, torn from the same book, marked by us for identification as S151 to S157, apparently show the domestic sales of linters from March, 1915, to June 1915.

The purchases are recorded on 29 pages marked by us for identification as P2 to P29. These pages had also been removed from a two-column bound book and all headings and dates had been removed.

The new assembly of records referred to above which bear our identification marks were left in the Company's office.

General

The chief activities of the Export Department were the receipt of large sums of money from abroad, which were credited to an account bearing the fictitious name of Wipeclo Mills and the purchase and shipment of large quantities of cotton, linters and waste to fictitious consignees in foreign countries.

We cannot find that any sales record was made of the foreign shipments, excepting such data as to cost of purchases and cost of shipments as was collected in loose folders. The total cost of each of these shipments, irrespective of the consignee, was charged, without any added profit, to Wipeclo Mills account.

The profit realized on a few domestic sales was credited to the account of Wipeclo Mills.

[fol. 137] During the period from December, 1914, to April, 1915, this department received from Wipeclo Mills, (who, we are informed is, in fact, Reis and Company of Heidelberg, Germany) over two millions of dollars and shipped to foreign countries, cotton, waste and linters costing apparently $1,500,000.00.

The records show, that although the merchandise was shipped to various points such as Genoa, Italy, Gottenburg, Sweden, and Rotterdam, Holland, the duplicate bills of lading and the original marine insurance papers were sent to Germany through various indirect agencies.

Five of these shipments, destined for various foreign ports, were seized by the British authorities, who through the insurance com-

panies, paid in full for the estimated selling price of the merchandise on board.

In the case of the consignment of 3,064 bales of linters to Naamlooze, Vennootschap, Blaauwhoedenveem, at Rotterdam on S. S. Carolyn from Savannah March 30, 1915, the British authorities refused to settle for the full insured value. The cost of the shipment including freight, insurance, and handling appears to have been $68,266.55. The British authorities through the insurance companies paid $60,109.92 said to represent the delivered cost. The Richard Mayer Company—Export Department had secured United States War Risk Insurance on this shipment, and received from the United States Treasury Department a check for $62,595.03 in payment of their claim for $120,000.00 and interest.

A large number of these foreign shipments was consigned to one Louis G. Dreyfus, sometimes to Genoa, and at others to Rotterdam. Of this Dreyfus, Richard Mayer Company write to Hagedorn & Company of New York, on April 21, 1916, ". . . . he was solely our agent and was employed for this particular purpose on account of his Swiss nationality."

In this same letter Mayer Company state: "an endorsement for Messrs. B. Lenke Company, if necessary, could also be arranged here." We were unable to ascertain any particulars regarding said Company.

[fol. 138] The books record the receipt from Hagedorn & Company, insurance agents of $346,480.14 on account of the seized shipments, the notation showing that this amount was deposited with the Guaranty Trust Company of New York on July 21, 1915. On July 27, 1915, $300,000.00 of this amount was transferred to the National City Bank of New York, and placed to the credit of Mendelson & Company. The records of the National City Bank show this amount credited on July 28, 1915, to Mendelson & Company, Berlin. The latter account appears to have been quite an active one, and the final disposition of the $300,000.00 cannot be positively identified in it. However it shows that on a cable order of July 27, 1915, $300,000.00 was transferred to certain Swedish Banks. We are informed by the National City Bank that its account with Mendelson & Company was closed in February, 1917.

Assets

Cash—First National Bank, Boston $1,416.65

The cash on deposit was verified by certification from the bank. There was no cash on hand.

Cash—Smith, Coney, and Barrett, Liverpool $2,425.50

The last account current received from Liverpool was as of December 31, 1917. At that time there was a balance in favor of Richard Mayer Company—Export Department in the amount of £427.16.10. On May 4, 1918, they were requested to pay £390.12.9 for legal expenses. This would leave a balance in Liverpool of £37.

4.1. In the absence of a later confirmation of the account, we have not made any adjustment of the book figure as shown above.

Richard Mayer—Personal $20,576.76

This amount represents charges for payments made to Mr. Mayer's relatives by Reis and Company in Germany, amounting to $208.97 and sundry items of cash drawn, no explanation being given, amounting to $20,367.79.

Anglo-American Cotton Company $989.60

A check was drawn by Richard Mayer Company—Export Department on April 13, 1917, to the order of the Anglo-American Cotton Company in the amount of $989.60. This check was endorsed by the Anglo-American Cotton Company and deposited in [fol. 139] its bank.

The records of the Anglo-American Cotton Company make it appear that the check was received from the American Express Company. On the same day there was a check drawn by the Anglo-American Cotton Company to the order of the American Express Company for $989.60. Correspondence on file in the office of the Anglo-American Cotton Company shows that this amount was used for cable transfer of Fcs. 5,000 to Charles Strauss at Lugano, Switzerland. Charles Strauss is said to be Karl Strauss, an alleged partner of Reis and Company.

Capital Stock—Richard Mayer Company $100,000.00

The capital stock account of the Richard Mayer Company shows a receipt of $100,000.00 on June 5, 1915, from Reis and Company. The 1,000 shares of stock represented were issued on June 8, 1915, in the name of Richard Mayer. It would thus appear that the Richard Mayer Company—Export Department is indeed the successor of Reis and Company.

Capital Stock—Anglo-American Cotton Company..... $40,000.00

On June 28, 1915, there were two checks drawn to the order of S. A. Noether, #376 for $22,000.00 and #377 for $18,000.00. Both of these checks were endorsed in blank by Noether. O. S. Bauer, cashed these checks at the First National Bank, his name appearing on each as endorser. When we questioned Noether, the bookkeeper of the Anglo-American Cotton Company regarding these checks, he said that it was so long ago he had forgotten the particulars of the transaction; he did not know the name of the second endorser; and in fact, did not know who Bauer was. Mr. Laible finally remembered the transaction as being the method used to transfer the funds, for the Capital Stock of the Anglo-American Cotton Company from the Richard Mayer Company—Export Department.

This $40,000 together with the $10,000.00, withdrawn from the account of Laible and Rowe, through the agency of O. S. Bauer (previously mentioned in these comments) constituted the total au- [fol. 140] thorized capitalization of the Anglo-American Cotton Company.

Investments—Sundry Securities $351,779.97

The securities carried as having a book value of $351,779.97 are detailed in Schedule #1. We counted the United States Liberty Loan Bonds; the Gasoline Corporation Stock and the notes shown; the industrials and municipals were verified by certification from Lee, Higginson & Company, the custodians.

Liabilities

Richard Mayer Company $3,000.00

This represents the unaccounted for balance of funds that Richard Mayer used for trading in securities. Up to December 31, 1917, the securities carried for the Richard Mayer Company and Richard Mayer Company—Export Department, were carried in one account. At that date a division of the securities was made and this balance has not been taken up on the books.

The only other liability shown by the books is an understanding that $250.00 per month be paid to L. Stadeker, a relative of E. Reis.

Balance of Capital $514,188.48

A statement of this amount is shown in Schedule #2.

We are informed that Wipeclo Mills is a fictitious name and that the account, so called, on the books, represents a fund furnished by Reis and Company of Heidelberg, Germany, for the purpose of purchasing linters, cotton and waste to be shipped to Germany.

During the period from December, 1914, to March 31, 1915, there were approximately 37 shipments made.

There were no sales records of these foreign shipments made except in so far as the cost of the merchandise purchased and the cost of handling insurance and freight were charged to the Wipeclo Mills account.

Profits realized from several domestic sales of merchandise that it was impossible to ship, have been credited to this account.

[fol. 141] There is charged to the Wipeclo account through a journal entry $100,000.00, Richard Mayer Company being credited. The entry appears as "cancellation of entry" and we were unable to obtain any further particulars. Our examination of Richard Mayer Company's books shows that on January 12, 1915, it drew a check for $80,000.00 payable to Reis and Company, and passed a credit on account of a note for $20,000.00. The check referred to was endorsed by Reis and Company and deposited to the account of Laible and Rowe. During the period from February 5, to February 9, 1915, there was credited to Reis and Company $170,000.00, the funds having been withdrawn from the account of Laible and Rowe, and we are informed that these payments include the return of the $80,000.00 above mentioned.

The balance of Capital $514,188.48 represents the unexpended amount of the fund furnished by Reis and Company as coming

from Wipeclo Mills, and the amount received through Laible and Rowe and credited to Reis and Company capital.

During the period from November 28, 1914, to June 26, 1915, Richard Mayer received a salary from the Richard Mayer Company—Export Department $3,505.50 being at the rate of $116.85 per week.

We cannot find where Richard Mayer received any division of profit or other emolument.

Maurice Eisemann received $500.00 as part of a bonus for conducting the business successfully during Mr. Mayer's absence in Germany.

Leon R. Rowe, employe and stockholder in the Richard Mayer Company, received extra compensation in the amount of $8,300.00 for what reason we were unable to ascertain.

During our examination we found several letters from Hagedorn & Company, Insurance Agents, New York and the replies thereto. As the letters indicate a close relationship between the parties, we quote as follows from a few of them:

[fol. 142] Exhibit A

Richard Mayer Company—Export Department

Assets and Liabilities and Balance of Capital Accounts May 31, 1918

Assets

Cash—First National Bank, Boston ..	$1,416.65	
Cash—Smith, Coney, and Barrett, Liverpool	2,425.50	
		$3,842.15
Accounts Receivable:		
Richard Mayer, Personal	$20,576.76	
Anglo-American Cotton Company ..	989.60	
		21,566.36
Investments:		
Capital Stock, Richard Mayer Company, at Par	$100,000.00	
Capital Stock, Anglo-American Cotton Company, at Par	40,000.00	
	$140,000.00	
Sundry Securities, Per Schedule #1.	351,779.97	
		491,779.97
Total		$517,188.48

Liabilities

Richard Mayer Company		$3,000.00
Balance of Capital:		
Wipeclo Mills, Per Schedule #2	$397,185.34	
Reis and Company, Per Schedule #2	117,003.14	
		514,188.48
Total		$517,188.48

[fol. 143] Exhibit A—Schedule No. 1

Statement of Investments May 31, 1918

Bonds and Stock

Par value		Book value
$7,000.00	St. Louis and San Francisco 5s, 1950	$6,214.45
5,000.00	Public Service of Northern Illinois 5s, 1956	4,825.69
10,000.00	Consolidated Gas, Electric Light & Power 4½s, 1935	9,502.50
10,000.00	Great Western Power Company 5s, 1946	9,102.78
3,000.00	Atlanta and Charlotte 5s, 1944	3,021.25
1,000.00	General Electric 6s, 1920	1,001.83
15,000.00	State of Massachusetts Coupons 3½s, 1948	13,702.00
30,000.00	City of Cambridge 4½s, 1921-1927	30,796.20
10,000.00	City of Chicopee Coupons 4¼s, 1930	10,207.85
25,000.00	Federal Land Bank 4½s, 1937	25,293.75
50,000.00	United States Liberty Loan 4s	50,000.00
112,000.00	United States Liberty Loan 3½s	112,000.00
65,000.00	Canadian Gasoline Corporation, Ltd.	
5,000.00	Gasoline Corporation—Common	45,000.00
5,000.00	Gasoline Corporation—Preferred	

Notes Receivable

10,000.00	*Guy Murchie	10,000.00
15,000.00	*Guy Murchie	15,000.00
5,000.00	*Guy Murchie	4,586.67
1,000.00	Flexner Taylor Company	1,000.00
400.00	Sarah H. Welch	400.00
125.00	Consolidated Construction Company	125.00
Total		$351,779.97

*Collateral—285,000 Shares of Canadian Gasoline Corporation, Ltd.

[fol. 144] Exhibit A—Schedule No. 2

Capital Accounts May 31, 1918

Wipeclo Mills Capital

Debits

Purchases	$1,178,510.30
Cost of Chartering Two Steam Ships	108,624.67
Forwarding Expenses	608,955.51
Insurance	146,306.52
Commissions and Allowances	5,225.63
General Expenses	7,656.19
Salaries	8,751.85
Richard Mayer Salary—30 Weeks @ $116.85	3,505.50
Traveling Expense	7,428.48
Legal Expense	4,492.35
Extra Compensation—Leon R. Rowe	8,300.00
Extra Compensation—M. Eisemann	500.00
Cash Paid L. Stadeker	8,125.00
Cash said to have been Deposited to Credit of Mendelson & Company	300,000.00
Richard Mayer Company—"Cancellation of Entry".	*100,000.00
Loss on Securities	17,136.70
Balance	397,185.34
Total	$2,910,704.04

Credits

Cash Received from Wipeclo Mills		$2,078,202.72
Sales—Domestic		301,019.18
Receipts on Account of Seizures Made by British Authorities:		
From Insurance Companies	$411,140.97	
From United States Treasury Department on Account War Risk	62,595.03	
		473,736.00
[fol. 145] Interest Received		27,442.17
Richard Mayer—Personal, Transfer of Funds to Germany		208.97
Richard Mayer Company		*20,000.00
Richard Mayer Company		10,000.00
Transfer of Funds to Hans Jaegar		95.00
Total		$2,910,704.04

*See Comments.

Reis and Company (Boston) Capital

Debits

Cash Paid to Reis and Company	$90,315.53
War Risk a/c S. S. Negus	1,050.00
Balance	117,003.14
Total	$208,368.67

Credits

Cash Received from Reis and Company	*$176,920.50
Purchases	11,448.17
Cash through Richard Mayer Company	20,000.00
Total	$208,368.67

Summary

Balance of Wipeclo Mills Capital	$397,185.34
Balance of Reis and Company's Capital	117,003.14
Total	$514,188.48

PLAINTIFF'S EXHIBIT 5

Haskins & Sells, Certified Public Accountants, 30 Broad Street New York

Cable Address "Hasksells"

New York, August 3, 1918.

Alien Property Custodian, Bureau of Audits, Washington, D. C.

Trust 19975: Reis & Company, Heidelberg, Germany. Report 21705: Richard Mayer Company, Boston, Mass.

DEAR SIR: Pursuant to engagement, we have made an examina-
[fol. 146] tion of the books, accounts, and records of Richard Mayer Company, 200 Summer Street, Boston, Massachusetts, and submit herewith ten pages of comments and the following described exhibits and schedules:

Exhibit "A"—General Balance Sheet, May 31, 1918, and October 10, 1914, and Comparison.
Schedule #1—Investments.

---

*See Comments.

Exhibit "B"—Statement of Income and Profit & Loss, by Periods, from October 10, 1914, to May 31, 1918, as Shown by the Unaudited Book Figures.
"C"—Statement of Suplus Account to May 31, 1918.
"D"—Journal Entries Necessary to adjust the Books and Harmonize them with Exhibit "A," May 31, 1918.

Yours truly, Haskins & Sells.

Received at New York Office.

Richard Mayer Company Boston, Massachusetts

Comments on the Examination

Historical

During the period covered by our investigation, from 1911 to May 31, 1918, the following businesses were being conducted from the same office and with practically the same employes:

Reis and Company:

This firm had been in business several years prior to 1911 and is said to have wound up its business in 1915 or 1916.

There are no records available but it would appear that the Richard Mayer Company—Export Department is the successor.

Richard Mayer Company—Export Department from December, 1914, to May 31, 1918:

The only activities of moment were recorded between December, 1914, and April, 1915, during which period it was buying large quantities of cotton and linters for shipment abroad.

[fol. 147] Richard Mayer, as a private business from July, 1911, to June 30, 1913.

Richard Mayer, as a department of Reis and Company from July, 1913, to October 10, 1914.

Richard Mayer Company, from October 10, 1914, to May 31, 1918.

The Richard Mayer Company was organized on October 8, 1914, under authority of Chapter 437 of the Acts of 1903, Commonwealth of Massachusetts, with principal office in the City of Boston, Massachusetts.

The capital stock originally authorized consisted of 500 shares of common stock of a par value of $100.00 per share.

The first meeting was held on October 8, 1914, at which there were present the following incorporators:

Leon R. Rowe	Subscribing for	1	Share
Julius Laible	"	1	"
Maurice Eisemann	"	1	"
L. J. Madigan	"	1	"
W. F. Brennan, Jr.	"	1	"

At this meeting the following officers were elected:

President, Leon R. Rowe, Vice-President, Maurice Eisemann, Treasurer, Julius Laible; also all of the incorporators were elected directors.

The minutes of this meeting recite that:

"The President then presented a communication from Richard Mayer proposing to sell certain property to the corporation in exchange for the entire capital stock of the Company remaining after the subscription as aforesaid by the incorporators. Thereupon, after discussion, the following resolution was unaimously adopted."

"Whereas Reis and Company, of Heidelberg, Germany, desire to sell so much of their business as is now conducted under the Richard Mayer Department, so called, of said company, and, to that end, propose to sell, assign, transfer and deliver to this company, merchandise, consisting of cotton and wool waste and other textile fibres now in various warehouses in Boston and elsewhere, [fol. 148] which has been truly inventoried at the sum of thirty two thousand, five hundred dollars ($32,500.00) and desire to subscribe in cash for the capital stock of this company in excess of said thirty two thousand, five hundred dollars ($32,500.00) that is to make up the total amount of fifty thousand dollars ($50,000.00) par value, less five shares already subscribed for, all of the above to be in exchange for the capital stock of this company, as aforesaid, to be issued full paid and non-assessable."

We inquired for the "communication" mentioned in the first above quoted paragraph and were informed that such a document was not in existence and that it probably was a verbal offer.

Mr. Richard Mayer was in Germany at the time this Company was formed.

The capital stock amount in the ledger shows the following entries all dated as of October 10, 1914:

Reis and Company	Cash	$17,000.00
L. R. Rowe	"	100.00
J. Laible	"	100.00
M. Eisemann	"	100.00
L. J. Madigan	"	100.00
W. F. Brennan, Jr.	"	100.00
Wool Waste	"	23,295.41
Cotton Waste	"	9,204.59
Total		$50,000.00

Of the five incorporators, Messrs. Rowe, Madigan, and Brennan were employes of the Richard Mayer Department while Messrs. Laible and Eisemann were employed by Reis and Company.

On October 8, 1914, the following stock certificates were issued:

#1. Reis and Company	495	Shares.
2. Julius Laible	1	"
3. Leon R. Rowe	1	"
4. Maurice Eisemann	1	"
[fol. 149] 5. L. J. Madigan	1	"
6. W. F. Brennan, Jr.	1	"
Total	500	Shares.

On June 1, 1915, certificate No. 1 (issued to Reis and Company) was canceled and certificate No. 9 for 495 shares issued to Richard Mayer.

Certificate No. 2 was endorsed in blank and the share represented therein was reissued on certificate No. 12 on January 28, 1916, to J. L. Flatau.

Certificate No. 3 was endorsed in blank and the share represented therein was reissued on certificate No. 16, on September 26, 1916, to Richard Mayer.

Certificate No. 4 was endorsed to Richard Mayer on November 17, 1914, and certificate No. 7 issued in lieu thereof.

Certificate No. 5 was endorsed in blank on March 28, 1916, and the share represented therein was issued on certificate No. 14 to George H. Hurd, who in turn endorsed it to Henry Chanin on certificate No. 17. Certificate No. 17 was endorsed in blank and reissued on January 17, 1918, to Charles E. Hicks, on certificate No. 18. Certificate No. 18 has not been detached from the stub, but is endorsed in blank.

Certificate No. 6 was endorsed in blank on February 1, 1916, and certificate No. 13 was issued to Richard Mayer in lieu thereof.

To sum up the disposition of the original issue of 500 shares the following persons are the present holders of record:

Richard Mayer	498	Shares.
J. L. Flatau	1	"
Chas E. Hicks (Certificate in Book—Endorsed)	1	"
Total	500	Shares.

At a meeting of Directors held on November 16, 1914, Richard Mayer was elected Treasurer and Vice-President.

At this point the minute book was mutilated by the tearing out of pages 23 and 24.

[fol. 150] At a special meeting of the Board of Directors held on April 10, 1915, it was recommended that the capital stock be increased by the issue of five hundred additional shares of the par value of $100.00 per share.

This recommendation was adopted at a special meeting of the stockholders, held on same day, and the Treasurer was authorized "to sell for cash, at not less than par, to such person or persons as he may deem proper, five hundred shares of capital stock of a par value of $100.00 per share."

The Capital Stock account shows the receipt of $50,000.00 cash from Reis and Company on April 10, 1915.

On the same date, certificate No. 8 was issued for 500 shares to Reis and Company and on June 1, 1915, it was canceled and certificate No. 10 was issued in the name of Richard Mayer.

At special meetings of the Board of Directors and Stockholders, held on June 5, 1915, it was voted to further increase the capital by the issuance of 1,000 shares of a par value of $100.00 per share.

The Capital Stock account shows a receipt of $100,000.00 in cash from Reis and Company on June 5, 1915.

Certificate No. 11 was issued on June 8, 1915, in the name of Richard Mayer for 1,000 shares.

The total outstanding capital stock at May 31, 1918, was held as follows:

Richard Mayer	1,998	Shares.
J. L. Flatau	1	"
Charles E. Hicks (Certificate in Book—Endorsed)	1	"
Total Issue	2,000	Shares.

We understand that since May 31, 1918, the certificates represented above have been canceled, and new certificates for the 2,000 shares issued to representatives of the Alien Property Custodian.

On January 29, 1916, Richard Mayer was elected President.

At the annual meeting of stockholders held on December 13, [fol. 151] 1916, it was voted to liquidate the business of the Corporation in the usual manner, but this action was rescinded at a special meeting held on March 3, 1917.

Reis and Company of Heidelberg, Germany, had an established business in Boston for several years prior to the incorporation of the Richard Mayer Company from 1909 to June 30, 1913, at which latter date Richard Mayer claims to have been admitted to partnership in Reis and Company. Julius Laible and Maurice Eisemann were joint managers of the Boston business. Mr. Laible is now Treasurer of the Anglo-American Cotton Company and Mr. Eisemann is Sales Manager of the Richard Mayer Company.

When Richard Mayer became a partner with Reis and Company, as claimed, the books of Reis and Company were taken to the office of Richard Mayer and the business of Reis and Company was carried on concurrently with that of Richard Mayer and other allied businesses from July 1, 1913, until, as is claimed, a liquidation was brought about in 1915 or 1916.

We are informed that the books, records, and correspondence pertaining to the Reis and Company business were removed and destroyed during the summer of 1917.

Richard Mayer conducted a business in Boston from July 1, 1911, at which date, the books show, he started with a capital of $26,000.00, until October 10, 1914, at which date the Richard Mayer Company was incorporated.

The cash and merchandise assets accumulated to October 10, 1914, appear to the amounts which were given in payment of the

original issue of 500 shares of capital stock of the Richard Mayer Company.

It would thus appear that it was this business which was referred to as, "so much of Reis and Company's business as is now conducted under the Richard Mayer Department, so called, of said company" in the offer of purchase and sale as previously quoted in these comments.

From July 1, 1911, to June 30, 1913, Richard Mayer was credited [fol. 152] on his books with a nominal weekly salary of $50.00 to $75.00 per week.

We do not find any credits to Mayer or charges to the salary account on account of Mayer's salary from July 1, 1913, to the date of the incorporation of the Company. In explanation of this, Richard Mayer says that his recollection is, that as he was a partner, he had a drawing account of $116.00 per week which was charged on the books of Reis and Company, which have disappeared.

During the time that Richard Mayer's business and Reis and Company's business were being conducted concurrently, we find on the books of Richard Mayer an account with Reis and Company. This account shows principally purchases and sales of merchandise and borrowings and repayments of loans. There are, however, several journal entries shown whereby Reis and Company is credited and "Salary Account" is debited with a "proportion of Richard Mayer's salary." In the absence of the Reis and Company's records we are unable to judge as to the significance of these entries.

The business of Reis and Company (outside of that conducted as Richard Mayer) was, we are informed, wound up in the year 1915. We are of the opinion, that there was no liquidation of the affairs of Reis and Company, as claimed, but that the business of the Richard Mayer Company—Export Department *ment* is, in fact, a continuation of said business. Mr. Laible informs us that they could not obtain credit and in order to protect the funds on hand, the total amount being something over $10,000.00, they were transferred to the Beacon Trust Company in the early part of 1915, under the name of Laible & Rowe. Ten thousand dollars of these funds were later withdrawn and used for the purchase of capital stock of the Anglo-American Cotton Company.

The volume of the business done by Reis and Company at the Boston office cannot be ascertained, owing to the destruction of the books, but we are informed that the business at that time was [fol. 153] small, due principally to the fact that they could not obtain credit to any extent, either here or abroad.

Assets

Cash $29,924.32

The cash on hand amounting to $200.00 was counted and that on deposit was verified by certification obtained from the First National Bank of Boston.

Investments $292,974.82

This represents the book value of the securities as listed on Schedule #1. We examined the last three enumerated items and

have received from Lee, Higginson & Company a certification to the effect that they have in their custody the United States 4¼% Liberty Loan and the State of Massachusetts Bonds.

Notes Receivable $270.00

The notes receivable consist of the unpaid balances of three demand notes, made by Henry Chanin, a former employe of the Company, and his brother. We are informed that this amount is good and collectible.

Accounts Receivable $73,939.34

The details of these accounts as shown by the subsidiary ledger agree in total with the controlling account. All of them appear to be current except as follows:

Gustav Ely $3,670.51

A resident of Germany, said to be an employe of Reis and Company, the account being guaranteed by Richard Mayer personally.

Scranton Textile Co. 3,613.67

This Company is being operated by a receiver. The reserve for doubtful accounts is considered ample to care for any loss that may be sustained.

Richard Mayer $21,500.00

This amount represents the balance to the debit of Richard Mayer on the books of the Company. Mr. Mayer was in the habit of investing funds of the Company in his own name and then turning [fol. 154] the securities over to the Company. Of this amount $18,000.00 is collectible from Richard Mayer personally and $3,000.00 from the Richard Mayer—Export Department.

Merchandise $41,281.61

The amount of merchandise on hand was taken from a system of perpetual inventory cards. We examined the records since last inventory date and compared entries with the original data. The prices are cost or market, whichever was lower on May 31, 1918.

Furniture and Fixtures $1.00

The total amount expended for furniture, as shown by the books, was $1,110.57. There have been written off to Profit & Loss $1,109.57, leaving the balance as shown.

Liabilities

Accounts Payable $14,909.84

In addition to the accounts payable, as shown by the ledger, there are included in the above total, sundry small liabilities which were not on the books at May 31, 1918.

Taxes Accrued $2,381.93

This amount is made up as follows:

Federal Income Tax, Error in Return, at December 31, 1915	$212.33
Federal Income Tax, Estimated to May 31, 1918	632.56
Massachusetts Franchise Tax, Estimated to May 31, 1918	1,239.76
Massachusetts Corporation Income Tax, Estimated to May 31, 1918	297.28
Total as above	$2,381.93

Capital Stock $200,000.00

Particulars, of the issuance of and the payment for the capital stock, have been presented earlier in these comments.

Surplus $244,139.78

A detailed statement of the surplus account, showing the earn-
[fol. 155] ings by calendar years and our adjustments of the book figures, is shown on Exhibit "C."

The earnings for the year ended December 31, 1917, of $29,727.93 less Federal Income Tax paid would leave a net taxable surplus at June 30, 1918, of $27,405.58. On May 9th the Company subscribed and paid for $28,000.00 of United States Liberty Loan 4¼% Bonds.

We find that the earnings of the Company, for the year ended December 31, 1915, were $99,064.61 and that they reported $77,-831.52. To correct this we have prepared Journal Entry No. 4, setting up a liability of $212.33.

General

From July, 1915, to October, 1916, Richard Mayer was in receipt of a weekly salary of $116.85 and from October, 1916, to May 31, 1918, he received a weekly salary of $150.00. So far as the books show he did not participate in any profit sharing nor were there any other sums paid to him. Prior to July, 1915, he was receiving a weekly salary from the Richard Mayer—Export Department.

Maurice Eisemann was in receipt of a weekly salary of $60.00 from June, 1915, to October 1, 1916. On October 1, 1916, a contract was entered into between Richard Mayer Company and Maurice Eisemann whereby he was to receive $100.00 per week (payable $75.00 per week and the balance quarterly) together with 10% of the net profits to December 31, 1917.

This contract further recites:

"In case Richard Mayer should not be connected with the Richard Mayer Company at the end of the period of this agrement, then and then only, the inventory of the merchandise shall be taken as heretofore, to wit, cost price * * *."

Although this contract bears the imprint of the Company's seal, no authority for its execution is contained in the minutes.

There is no account with Reis and Company, of Heidelburg, appearing on the books.

[fol. 156]

Exhibit A

Richard Mayer Company, Boston, Massachusetts

General Balance Sheet May 31, 1918, and October 10, 1914, and Comparison

Assets

Current Assets:		May 31, 1918	October 10, 1914	Increase
Cash		$29,924.32	$17,500.00	$12,424.32
Investments—Schedule #1		292,974.82	.....	292,974.82
Notes Receivable		270.00	.....	270.00
Accounts Receivable—Trade:				
Debtors	$73,939.34			
Less Reserve for Doubtful Accounts	1,000.00			
		72,939.34	.....	72,939.34
Richard Mayer		21,500.00	.....	21,500.00
Advance to Employe for Account of Liberty Bond		49.00	.....	49.00
Merchandise		41,281.61	32,500.00	8,781.61
Total Current Assets		$458,939.09	$50,000.00	$408,939.09
Furniture and Fixtures—Nominal Value		1.00	.....	1.00
Insurance Premiums—Unexpired Portion		2,491.46	.....	2,491.46
Total		$461,431.55	$50,000.00	$411,431.55

General Balance Sheet—Continued

Liabilities

Current Liabilities:	May 31, 1918	October 10, 1914	Increase
Accounts Payable—Trade Creditors	$14,909.84	.....	$14,909.84
Taxes Accrued	2,381.93	.....	2,381.93
Total Current Liabilities	$17,291.77	.....	$17,291.77
Capital Stock	200,000.00	$50,000.00	150,000.00
Surplus	244,139.78	.....	244,139.78
Total	$461,431.55	$50,000.00	$411,431.55

Exhibit B.

STATEMENT OF INCOME AND PROFIT & LOSS BY PERIODS
FROM OCTOBER 10, 1914, TO MAY 31, 1918 AS SHOWN BY THE UNAUDITED BOOK FIGURES

	January 1, 1918, to May 31, 191		January 1, 1917, to December 31, 1917		January 1, 1916, to December 31, 1916		January 1, 1915, to December 31, 1915		Organization to December 31, 1914	
Sales,	$353,973.608		$1,230,131.21		$1,767,364.28		$1,336,397.45		$123,872.58	
Cost of Sales,	326,137.98		1,132,920.34		1,548,878.25		1,165,357.66		112,732.74	
Gross profit on Sales,		$27,835.62		$97,210.87		$218,486.03		$171,039.79		$11,139.84
Selling, Administrative, and General Expenses:										
Freight,	$ 890,40		$ 6,138.27		$ 15,618.05		$ 15,851.50		$ 305.71	
Drayage,	511.75		4,214.55		5,791.83		1,568.88			
Disbursement Account,	1,040.00		3,479.33		1,030.00					
Storage,	1,785.16		11,700.13		15,599.54		2,455.97			
Sales and Traveling Expenses,	1,368.70		5,561.57		7,233.04		11,507.96		70.58	
Salaries,	7,757.00		22,752.00		21,266.30		13,510.67		1,711.00	
Rent and Light,	1,057.05		2,593.86		3,748.91		479.54			
Telephone and Telegrams,	483.94		2,008.01		2,320.49		909.71			
Philadelphia Office,					3,225.32		6,524.30		940.81	
Insurance,	1,016.15		2,747.21		5,437.45		844.96			
Legal Expenses,	50.00		679.25		127.53					
Office Supplies,	22.06		521.01		969.83		149.27			
Postage,	124.24		623.67		852.51		195.10			
Sample Room Expenses,	8.37		82.95		379.76		75.14			
Carfare and Express,	26.9[illegible]		122.27		180.54		38.39			
Office Furniture,	6.70		2.00		1,097.95					
General Expenses,	1,847.42		2,491.82		8,826.02		13,060.64		809.50	
Brokerage,	37.50		590.29		961.38		366.01			
Taxes,	1,849.09		6,810.00							
Bad Debts,			2,344.32		824.83		3,933.12			
Total,		19,882.47		75,462.51		95,491.28		71,471.16		3,837.60
Net Profits on Sales,		$ 7,953.15		$21,748.36		$122,994.75		$ 99,568.63		$ 7,302.24
Additions to Income:										
Brokerage,					$ 929.50		$ 1,220.25			
Discounts Received,	$ 1,612.44		$ 5,650.07		11,284.73					
Interest Received,	1,643.70		7,430.91		3,021.30		379.27		$ 13.98	
Total,		3,256.14		13,080.98		15,235.53		1,599.52		13.98
Total Income,		$11,209.29		$34,829.34		$138,230.28		$101,168.15		$ 7,316.22
Deductions from Income:										
Interest,			$ 1,479.15		$ 2,649.78		$ 2,031.92			
Cash Discounts Allowed,	$ 2,432.76		7,445.52		14,892.97		71.62		$ 17.64	
Adjustment on Brokerage,					1,220.25					
Provision for Loss on Brown Contract,					3,350.00					
Total,		2,432.76		8,924.67		22,113.00		2,103.54		17.64
Net Income,		$ 8,776.53		$25,904.67		$116,117.28		$ 99,064.61		$ 7,298.58

[fols. 157 & 158] Exhibit A—Schedule No. 1

Richard Mayer Company, Boston, Massachusetts

Statement of Investments at May 31, 1918

	Par value	Book value
State of Massachusetts Registered Exempt 3½%, September, 1919.....	$50,000.00	$49,565.44
U. S. Liberty Loan 4¼%.....	28,000.00	28,000.00
City of Lowell, Massachusetts, Notes Due November 1, 1918.....	150,000.00	143,409.38
U. S. Treasury Certificates Due June 18, 1918, 4½%.....	72,000.00	72,000.00
Total.....	$300,000.00	$292,974.82

(Here follows Exhibit B, marked side folio pages 159 and 160.)

[fol. 161] Exhibit C

Statement of Surplus Account to May 31, 1918

Net Income—Organization to December 31, 1914....		$7,298.58
Net Income—January 1, 1915, to December 31, 1915.		99,064.61
Net Income—January 1, 1916, to December 31, 1916.		116,117.28
Net Income—January 1, 1917, to December 31, 1917.		25,904.67
Net Income—January 1, 1918, to May 31, 1918.....		8,776.53
		$257,161.67
Deduct Bonus paid to Maurice Eisemann May 6, 1918, being 10% of profits from October 1, 1916, to December 31, 1917.....		9,521.31
Total Surplus per the Books May 31, 1918....		$247,640.36
From which is deducted:		
Journal Entry #4, Income Tax for Year Ended December 31, 1915.....	$212.33	
Journal Entry #5, Taxes Due Commonwealth of Massachusetts.....	1,537.04	
Journal Entry #7, Estimated Income Tax January 1, 1918, to May 31, 1918.....	632.56	
Journal Entry #9, Liabilities not Entered on Books May 31, 1918.....	774.47	
Journal Entry #10, Difference between Book Value and Market Price of Inventory at May 31, 1918.....	1,328.00	
Total Deductions from Surplus.....		4,484.40
		$243,155.96

[fol. 162] And to which is added:

Journal Entry #6, Taxes Accrued on Books now Written Back	$583.82	
Journal Entry #8, Estimated Amount of Unpaid Accounts now Written Back	400.00	
Total Additions to Surplus		983.82
Total Adjusted Surplus, May 31, 1918		$244,139.78

Exhibit D

Journal Entries Necessary to Adjust the Books and Harmonize Them with Exhibit "A" May 31, 1918

No. 1

Accounts Receivable	$429.65	
To Accounts Payable		$429.65

For transfer of debit balances on accounts payable ledger

No. 2

Accounts Receivable	4.07	
To Accounts Payable		4.07

For transfer of credit balances on accounts receivable ledger.

No. 3

Richard Mayer	21,500.00	
To Accounts Receivable		21,500.00

For transfer from accounts receivable of amount due by Richard Mayer and Richard Mayer—Export Department, so that the amount will be set up as a Balance Sheet item.

No. 4

Surplus	212.33	
To Taxes Accrued		212.33

For setting up liability on account of Income Tax for the year ended December 31, 1915. The earnings as shown by the books [fol. 163] amounted to $99,064.61 and the amount returned was $77,831.52. This is based on 1% of $21,233.09.

No. 5

Surplus	$1,537.04	
To Taxes Accrued		$1,537.04

For setting up estimated liability to the Commonwealth of Massachusetts to May 31, 1918.

Corporation Franchise Tax	$1,239.76
Corporation Income Tax	297.28
Total	$1,537.04

No. 6

Taxes Accrued	583.82	
To Surplus		583.82

For writing back amount of taxes accrued on the books to May 31, 1918.

No. 7

Surplus	632.56	
To Taxes Accrued		632.56

For estimated amount of Income Tax due to May 31, 1918, being 6% of Net Profits plus 1917 Income Tax paid during period.

No. 8

Accounts Payable	400.00	
To Surplus		400.00

For reversal of estimated amount of unpaid accounts, not shown on the books at May 31, 1918.

No. 9

Surplus	774.47	
To Accounts Payable		774.47

For setting up actual liabilities for accounts payable, not entered on books at close of business on May 31, 1918, per list on file in office.

[fol. 164]

No. 10

Surplus	$1,328.00	
To Merchandise		$1,328.00

For reduction in book value of inventory at May 31, 1918, to bring prices to market value.

Plaintiff's Exhibit 6

Haskins & Sells, Certified Public Accountants, 30 Broad Street New York

Cable Address "Hasksells"

Received Aug. 5, 1918, Department of Sales.

New York, August 3, 1918.

Alien Property Custodian, Bureau of Audits, Washington, D. C.

Trust 19975: Reis & Company, Heidelberg, Germany. Report 21074: Anglo-American Cotton Company, Boston, Mass.

Dear Sir: Pursuant to engagement, we have made an examination of the books, records, and accounts of the Anglo-American Cotton Company, 200 Summer Street, Boston, Massachusetts, for the period from June 10, 1915, to May 31, 1918, and submit herewith five pages of comments and the following described exhibits:

Exhibit "A"—General Balance Sheet, May 31, 1918, and June 10, 1915, and Comparison.
"B"—Statement of Income and Profit & Loss, by Periods, for the Period from June 10, 1915, to May 31, 1918.
"C"—Summary of Surplus Account to May 31, 1918.
"D"—Journal Entries Necessary to Adjust the Books and Harmonize them with Exhibit "A," May 31, 1918.

Yours truly, Haskins & Sells.

Received at New York Office.

[fol. 165] Anglo-American Cotton Company

Comments on the Examination for the Period from June 10, 1915, to May 31, 1918

Introductory

This Company was organized June 10, 1915, under authority of Chapter 437 of the Acts of the year 1903 of the Commonwealth of Massachusetts with a Capital of $50,000.00 represented by 500 shares of a par value of $100.00 each. The incorporators were J. E. McIntyre, Julius Laible and S. A. Noether.

At a meeting of the Board of Directors held on June 10, 1915, Julius Laible was elected President and Treasurer and Julius Laible, J. E. McIntyre and S. A. Noether were elected directors.

The Capital Stock was subscribed for as follows:

Julius Laible, Boston	498 Shares.
J. E. McIntyre, Boston	1 "
S. A. Noether, Boston	1 "
Total	500 Shares.

At a special meeting of the Board of Directors held on June 24, 1915, Julius Laible resigned as President and J. E. McIntyre was elected President in his stead.

The Stockholders of record at May 31, 1918, were as follows:

Number of certificate	Issued to	Number of shares
1.	Julius Laible	498
2.	S. A. Noether	1
3.	J. E. McIntyre	1
	Total	500

Certificates Nos. 4 to 50 are in the Certificate Book. The Cash Book entry showing the receipt of $50,000.00 paid in for Capital Stock does not indicate from whom the payment was received, but our investigation revealed that the proceeds of two checks aggregating $40,000.00, drawn by the Richard Mayer Company in favor of S. A. Noether, and the proceeds of a check for $10,000.00 of Reis [fol. 166] & Company were used to purchase the entire Capital Stock of the Company. The checks from the Richard Mayer Company were endorsed by S. A. Noether and by O. S. Bauer. The check from Reis & Company was in favor of O. S. Bauer and was endorsed by him. Among other reasons given for handling these transfers of funds in this manner, Mr. Laible informed us that it was intended to have it appear that no connection existed between the Richard Mayer Company and the Anglo-American Cotton Company.

Current Assets

Cash $22,677.09

The cash on deposit, $21,566.30, was verified by certification obtained from the First National Bank of Boston, and the cash on hand, $1,110.79, was counted.

Investments $5,000.00

This item represents the par value of United States Second Liberty Loan, 4% Bonds, owned by the Company.

Accounts Receivable $15,498.48

This item is composed of balances due from customers. We were informed that all accounts making up the above amount are considered collectible.

Julius Laible $1,933.33

On September 29, 1917, $1,500.00, representing the par value of the United States Liberty Loan Bonds then owned by the Company was written off and the bonds delivered to Julius Laible. We have written back $1,500.00, charging the amount to Julius Laible together with $433.33 covering salary paid in advance.

Merchandise $120,459.59

This item represents the merchandise owned by the Company and stored in various warehouses, as shown by the records. A schedule prepared from the Stock Cards of the Company and priced at cost, was furnished us. The mathematical calculations in the schedule were tested and the items appearing in the schedule were compared with the Company's stock records.

[fol. 167] Fixed Assets

Furniture and Fixtures..... $100.00

At various dates from its organization to January 31, 1917, the Company charged to the Furniture and Fixtures account the sum of $506.40. This amount was written off on May 31, 1917, and on September 29, 1917, $100.00 was written back from Loss and Gain.

Cadillac Limousine $3,000.00

In June 1917 the Company purchased a Cadillac Limousine for $3,150.00 and subsequently expended $834.70 for accessories increasing the cost of the automobile to $3,984.70. At the date of our examination the entire cost of the automobile had been written off. We have reinstated the asset at an estimated value of $3,000.00.

Current Liabilities

Notes Payable..... $50,000.00

This item represents two notes for $25,000.00 each, payable to the First National Bank of Boston. The notes are dated December 10, 1917, and April 24, 1918, and mature June 10, 1918, and July 24, 1918, respectively.

Accounts Payable $748.79

This item is composed of accrued expenses estimated at $748.79 for which bills had not been received at the date of our examination.

Past Due Taxes $1,058.37

This is the amount of the Federal Income and Excess Profits Taxes short paid for the year 1917, due to adjustments made by us in the income account for that year.

Accrued Taxes $2,094.12

This item represents an estimate of the Federal Income Tax on the earnings of the Company for the five months ended May 31,

1918, and the accrual of the taxes to be paid to the Commonwealth of Massachusetts.

General

The principal business of the Company has been the purchase and [fol. 168] sale of cotton waste to manufacturers and other dealers in the United States. The only transactions noted with foreign customers were as follows: Sales of cotton waste on October 20, 1916, and March 3, 1917, amounting to $3,558.80 and $5,663.60 respectively. The first shipment was lost in transit, on the S/S Columbia and the Company was reimbursed by the insurers, through Despard & Company of New York, to the extent of $3,600.00. During the years 1916 and 1917 the Company jointly with its President, J. E. McIntyre, as an individual, made sales of quebracho extract aggregating approximately $73,000.00 including a shipment valued at $27,714.96 to A. Magnus & Company of Gothenburg, Sweden. The entry recording this sale appears in the Company's ledger under date of March 31, 1916.

The Company's Cash Book shows that on April 14, 1917, there was received from the American Express Company $989.60 and that a like amount was disbursed to the same Company on April 12, 1917. Investigation showed that the remittance of $989.60 referred to was not received from the American Express Company but from the Richard Mayer Company—Export Department. Examination of the Company's correspondence files revealed that the Company transferred Fes. 5,000 by cable to the Park Hotel, Lugano, through the American Express Company. The recipient of these funds appears to have been Charles Strauss whom we assume is the Karl B. Strauss referred to in the Anglo-American Cotton Company's report to the Alien Property Custodian, as a member of the partnership of Reis & Company of Heidelberg, Germany.

At a special meeting of Stockholders and Directors held December 24, 1917, the following resolution was adopted:

"That J. Laible as Treasurer and Director of the Corporation in consideration of services rendered to the Corporation receive and draw the equivalent of 15% of the surplus of the Corporation, the arrangement to hold good until cancelled by mutual consent of those present at this meeting."

It was also unanimously voted:

[fol. 169] "To distribute at the discretion of the Treasurer the equivalent of 15% of the earnings of the Corporation beginning with October 1, 1917, amongst the employes and officers of the Corporation to take the place of a profit sharing plan."

Salaries, Profit Participations, etc.

The following salaries, profit participations, etc., were paid or allowed to officers and employes:

Julius Laible, Payments on Account of Salary:

June 10 to December 31, 1915	$725.00	
January 1 to December 31, 1916	2,975.00	
" Additional	1,975.00	
January 1 to December 31, 1917	2,925.00	
" Additional	2,925.00	
January 1 to May 31, 1918	2,691.67	
Total Salary	$14,216.67	
Credit—May 6, 1918—Per Exhibit "C"	11,428.49	
Total		$25,645.16

S. A. Noether, Payments on Account of Salary:

June 10 to December 31, 1915	$472.50	
January 1 to December 31, 1916	1,560.00	
January 1 to December 31, 1917	1,842.50	
January 1 to May 31, 1918	1,050.00	
Total		4,925.00

Salesmen and Office Employes, Payments on Account of Salaries:

June 10 to December 31, 1915	$1,317.00	
January 1 to December 31, 1916	2,988.50	
January 1 to December 31, 1917	4,551.00	
January 1 to May 31, 1918	2,106.00	
Total		10,962.50

J. E. McIntyre, Credits:

⅔ of Profits of Quebracho Shipments	$8,075.14	
[fol. 170] Commissions on Yarn Sales	4,060.00	
Total		12,135.14
Total		$53,667.80

There does not appear to be any enemy debtors or creditors at May 31, 1918.

Exhibit A

Anglo-American Cotton Company

General Balance Sheet, May 31, 1918, and June 10, 1915, and Comparison

Assets

		May 31, 1918	June 10, 1915	Increase or *decrease*
Current Assets:				
Cash		$22,677.09	$50,000.00	*$27,322.91*
Investments		5,000.00	.....	5,000.00
Accounts Receivable—Trade		15,498.48	.....	15,498.48
Julius Laible		1,933.33	.....	1,933.33
Merchandise		120,459.59	.....	120,459.59
Total Current Assets		$165,568.49	$50,000.00	$115,568.49
Fixed Assets:				
Furniture and Fixtures	$100.00			
Cadillac Limousine	3,000.00			
Total Fixed Assets		3,100.00	.....	3,100.00
Total		$168,668.49	$50,000.00	$118,668.49

General Balance Sheet—Continued

Liabilities

Current Liabilities:	May 31, 1918	June 10, 1915	Increase or *decrease*
Notes Payable	$50,000.00	.....	$50,000.00
Accounts Payable—Trade	748.79	.....	748.79
Past Due Taxes	1,058.37	.....	1,058.37
Accrued Taxes	2,094.12	.....	2,094.12
Total Current Liabilities	$53,901.28	.....	$53,901.28
Capital Stock	50,000.00	$50,000.00	.....
Total Liabilities	$103,901.28	$50,000.00	$53,901.28
Surplus	64,767.21	.....	64,767.21
Total	$168,668.49	$50,000.00	$118,668.49

(Here follows Exhibit B, marked side folio pages 171 and 172)

Exhibit B.

STATEMENT OF INCOME AND PROFIT & LOSS BY PERIODS FOR THE PERIOD FROM JUNE 10, 1915 TO MAY 31, 1918

	January 1, 1918 to May 31, 1918		January 1, 1917 to December 31, 1917		January 1, 1916 to December 31, 1916		June 10, 1915 to December 31, 1915	
Sales,	$199,011.36		$470,369.68		$766,599.39		$291,154.62	
Cost of Sales,	177,138.27		421,281.26		711,532.37		252,174.99	
Gross Profit on Sales,		$21,873.09		$49,088.42		$55,067.02		$38,979.63
Expenses:								
Forwarding,	$ 4,098.72		$ 10,020.13		$ 5,009.28		$ 1,741.62	
Salaries,	5,847.67		12,243.50		9,498.50		2,514.50	
Traveling,	688.04		2,947.65		1,826.17		282.02	
Insurance,			410.50		2,403.83		485.14	
Commissions,	*160.00*		384.50		49.68		696.75	
Automobile,			984.70					
General,	3,703.44		5,955.22		3,971.93		1,709.92	
Total,		$14,177.87		$32,946.20		$22,759.29		$ 7,429.95
Net Profit on Sales,		$ 7,695.22		$16,142.22		$32,307.63		$31,549.68
Other Income:								
Discount Received,	$ 1,172.11		$ 2,859.26		$ 3,200.92		$ 217.49	
Interest Received,							377.23	
Profit on Joint Account with J. E. McIntyre,			379.32		3,326.05			
Total		1,172.11		3,238.58		6,526.97		594.72
Gross Income,		$ 8,867.33		$19,380.80		$38,834.60		$32,144.40
Deductions From Income:								
Interest Paid,	$ 525.22		$ 2,018.70		$ 12.66			
Taxes,	2,094.12		1,947.00					
Losses on Cotton Transactions,					14,968.96			
Furniture and Fixtures,			406.40					
Total,		2,619.34		4,372.10		14,981.62		Nil
Net Income for Period,		$ 6,247.99		$15,008.70		$23,852.98		$32,144.40

[fol. 173] Exhibit C

Summary of Surplus Account to May 31, 1918

Net Income,	June 10, 1915, to Dec. 31, 1915		$32,144.40
"	Jan. 1, 1916, to Dec. 31, 1916		23,852.98
"	Jan. 1, 1917, to Dec. 31, 1917		15,008.70
"	Jan. 1, 1918, to May 31, 1918		6,247.99
Total			$77,254.07
From which is deducted:			
Credit to Julius Laible, Allowed May 6, 1918, being 15% of Surplus on May 1, 1918, in Accordance with Resolution Adopted at Meeting of Stockholders and Directors on December 24, 1917		$11,428.49	
Journal Entry #5—Additional Corporation Income and Excess Profits Due for Year Ended December 31, 1917 ..		1,058.37	
Total Deductions			12,486.86
Surplus May 31, 1918, after Adjustments			$64,767.21

Exhibit D

Journal Entries Necessary to Adjust the Books and Harmonize Them With Exhibit "A" May 31, 1918

No. 1

J. Laible	$1,500.00	
To Loss and Gain		$1,500.00

To offset charge to Loss and Gain September 30, 1917, when Liberty Bonds were written off and bonds delivered to J. Laible.

No. 2

J. Laible	433.33	
To Salary Account		433.33

To charge to J. Laible salary paid in advance.

[fol. 174] No. 3

Merchandise	202.00	
To Adams Express Company		202.00

To reverse charge to Adams Express Company on account of shipment lost in transit. Charge to customer is still in effect.

No. 4

Cadillac Limousine	3,000.00	
To Surplus		3,000.00

To write back at estimated value of $3,000.00 a Cadillac Limousine purchased in June, 1917.

No. 5

Forwarding Expenses	$566.62	
General Expenses	182.17	
To Accounts Payable		$748.79

To set up liability for storage charges, rent, telephone service, etc., for which bills had not been received on May 31, 1918.

No. 6

Surplus	1,058.37	
To Past Due Taxes		1,058.37

To set up liability for Corporation Income and Excess Profits Taxes short paid for year ended December 31, 1917.

No. 7

Forwarding Expenses	40.01	
To Warehouse Bills		40.01

To transfer debit balance.

No. 8

Taxes		2,094.12	
Massachusetts Income	$150.09		
Massachusetts Franchise	1,500.00		
Federal Income	444.03		
Total	$2,094.12		
To Accrued Taxes			2,094.12

Estimated accrual of taxes for five months ended May 31, 1918.

Translation of Private Account of Richard Mayer in Herzberg

1918				1915			
Dec. 31.	Transfer from General acct.	M	170987.48	Dec. 31.	By share business capital per page 41, private ledger	M	20000.00
"	" Book I Straw Food Railway siding		9450.00	"	Share Machinery & Buildings, per page 41, of private ledger		49987.49
"	" Reis & Co.		162000.00	1916			
"	" " "		27000.00	Dec. 31.	Transfer private ledger Machinery & Buildings		37029.62
							107017.11
				1917			
				Dec. 31.	Transfer private ledger page 42, Mach. & Bldgs.		28982.89
				"	Transfer private ledger page 42, Mach. & Bldgs.		29487.48
				"	Transfer private ledger page 42, Capital Share		5500.00
				"	Participation in loss of Ludwig Reis' share 1917		3256.91
				1918			
				Dec. 31.	Transfer from General Acct. Share in business		27000.00
				"	Transfer from General Acct. for extensions		153343.09
				"	Transfer from Book I, Extraction plant...		1350.00
				"	Transfer from Book I, Land		13500.00
		M	369437.48			M	369437.48

Translation of Private Account of Richard Mayer in Cleaning Waste Factory

1921			1920		
Dec. 31.	Transfer from Reis & Co.	M 66228.77	Dec. 31.	Capital Acct.	M 80000.00
"	Balance forward	237151.74	"	Rest share in profits 20%	66228.77
			1921		
			Dec. 31.	" " " " "	157151.74
		M 303380.51			M 303380.51
			1922		
			Jan. 1.	Balance forward	80000.00
			"	" "	157151.74 M 237151.74

Translation of Private Account of Richard Mayer in Reis & Company Friedrichsfeld

1913			1913		
Oct. 31.	Investment Kapok Dept	M 5000.00	July 1.	By Investment in Firm as per Inventory...	M 206054.02
Dec. 31.	To Balance	219708.05	Dec. 1.	" Interest on Capital	3863.50
			" 1.	" 20% Participation of Net Profit for 5 mos.	14790.53
		M 224708.05			M 224708.05

[fol. 176]

1914			1914		
May 31.	To withdrawals as per Dec. 1, 1913 (Balance of private account)	3578.25	Dec. 1.	By Balance carried forward	219708.05
1915			1915		
Dec. 31.	" Balance of private a/c	6994.27	Dec. 22.	" $870.35	3578.25
" 31.	" 20% participation Herzberg	20000.00			
" "	" 20% participation Algersdorf Kr. 20,000	13400.00			
" "	" Participation Richard Mayer Co.	51039.18			

"	"	" Participation Herzberg Machinery & Buildings	49987.49		
"	"	" Balance	78287.11		
			M 223286.30		M 223286.30

1916

1916

June	9.	To Payment Algersdorf Kr. 32,000	22288.00	Jan.	1.	By Balance carried forward	78287.11
	17.	" " " Kr. 16,000	12000.00	"	"	" Interest on Capital	19800.00
Dec.	31.	" Transfer from Private account	276.50	"	"	" Share in profits	820584.94
	"	" Interest Private acct	60.00	"	"	" Adjustment of interest on capital	1300.00
	"	" Transfer from Herzberg Machinery & Buildings	37029.62	Dec.	31.	" Adjustment of interest on capital 1916.	40549.26
	"	" M 50,000 4½% Treasury Bonds	47500.00	"	"	" Share in profits Algerdorf 1915	618.31
	"	" M 380,000 5% War Loan	372400.00	"	"	" Share in profits Algerdorf 1916	179509.26
	"	Balance	649094.76				
			M1140648.88				M1140648.88

1917

1917

Dec.	31.	Increase in Capital Algersdorf Kr. 60,000.	38400.00	Jan.	1.	Balance carried forward	649094.76
	"	War Profit taxes	266432.40	Aug.	11.	Return of Treasury Bonds M 50,000	47500.00
	"	Share Herzberg Machinery & Buildings	28982.89	"	11.	Return of War Loan M 380,000	372400.00
	"	Transfer from Private Acct	3959.15	Dec.	31.	Share profit Algersdorf 1916	1105.12
	"	Balance	843421.45	"	31.	Interest on Capital	29209.50
				"	31.	Share profit 1917	81886.51
			M1181195.89				M1181195.89

1918

1918

July	10.	Capital Share L. R. Algersdorf Kr. 49,500 value 1/1/18	31680.00	Jan.	1.	Balance carried forward	843421.45
	10.	Share L. R. Herzberg Machinery	29487.48	"	"	Share profit Algersdorf 1917	5184.00
	10.	Share Capital L. R. Herzberg	5500.00			Transfer to Private acct	28794.22
Dec.	31.	Withdrawal of Bonds	456490.04			Herzberg Straw Food Railroad connection	9450.00
	"	Herzberg building of Extractors	1350.00			Share U. S. A	27
	"	Herzberg land	13500.00			Share Algersdorf	54675.00
	"	Share of Loss 1918	69650.96			" Herzberg	162000.00
	"	Carried forward	522866.46			" Herzberg stock	27000.00
			M1130524.94				M1130524.94

Translation of Private Account of Richard Mayer in Reis & Company Friedrichfield—Continued

[fol. 177]

1919			1919		
Dec. 31.	Carried forward from Private account...	M 46210.09	Jan. 1.	Carried over from Balance Sheet.....	M 522866.46
"	Minus	18064.76	"	Return of Bonds.....	456490.04
		28145.33	Dec. 31.	4½% Interest 1919.....	44071.04
"	Withdrawal of bonds.....	457650.00	"	Share of Profit 1919.....	348827.92
"	Balance	886460.13			
		M1372255.46			M1372255.46
			1920		
			Jan. 1.	Carried forward.....	886460.13
			"	Return of bonds.....	457650.00
			Dec. 31.	Transfer from Private acct.....	3244.00
			"	5% interest Capital 1920.....	67205.50
			"	Share of profits 1920.....	305364.70
1921			1921		
Dec. 31.	Withdrawals	14309.00	Jan. 1.	Carried over from Balance Sheet.....	1719924.33
"	Balance of accounts.....	2581279.95	"	Transfer Wiping Waste Factory 1920.....	66228.77
			"	Transfer Kapok Factory 1920.....	96908.70
			Dec. 31.	5% interest Capital 1921.....	94153.90
			"	Share profit 1921.....	618373.25
		M2595588.95			M2595588.95
			1922		
			Jan. 1.	Carried over from Balance Sheet.....	M2581279.95

Translation of Private Account of Richard Mayer in Algersdorf

1918		1915	
Dec. 31. Transfer General Acct.	Kr. 229500.—	Dec. 31. Share in Business Capital, page 41, private ledger	Kr. 20000.—
		1916	
		June 9. Payment Algersdorf, increase capital, page 41 private ledger	32000.—
		" 17. " " "	16000.—
		1915	
		Dec. 31. Increase of Capital	12000.—
		1916	
		Dec. 31. " " "	40000.—
		1917	
		Dec. 31. " " " per private ledger, page 42	60000.—
		1918	
		Dec. 31. Share Ludwig Reis	49500.—
	Kr. 229500.—		Kr. 229500.—
1918		1918	
Dec. 31. Transfer Reis & Co.	Kr. 243000.—	Dec. 31. Transfer general account	Kr. 243000.—

1917				1916			
Dec. 31.	Transfer from Private acct. Reis & Co...	M	3291.72	July 1.	Participation	M	17417.55
1918				Dec. 31.	Share in profits & interest.....		10136.41
Nov. 30.	" " ...		5585.10	1917			
Dec. 31.	" " ...		900.00	July 1.	" " " "		10790.77
	Balance		58064.76	Dec. 31.	" " " "		4946.99
				1918			
				July 1.	Interest first half year.....		900.00
				Dec. 31.	" second " "		900.00
					" Share in profits 1918.....		22749.86
		M	67841.58			M	67841.58
1919				1919			
Dec. 31.	Transfer private acct. Reis & Co.....	M	18064.76	Jan. 1.	Capital Investment		40000.00
	" Balance		78998.74		Share profit 1918.....		18064.76
				Dec. 31.	" " 1919.....		38998.74
		M	97063.50			M	97063.50
1920				1920			
Nov. 24.	Transfer private acct. Reis & Co.....	M	38998.74	Jan. 1.	Balance forward.....	M	78998.74
				Dec. 31.	Capital acct. 20%.....		10000.00
					" Rest share in profits plus 5% interest.....		96908.70
1921				1921			
Dec. 31.	" " "		96908.70	Dec. 31.	Share in profits plus 5% interest.....		86090.43
	" Balance forward.....		136090.43				
		M	271997.87			M	271997.87
				1922			
				Jan. 1.	Balance forward.....	M	136090.43

Defendants' Exhibit IV

C A C D U Reis Co. Boston

1914				Rate
June 30	$6,000	M	25,200	4.20
July 17	3,000	"	12,600	4.20
Oct. 30	15,000	"	68,400	4.56
" 30	10,000	"	45,500	4.55
" 31	25,000	"	113,750	4.55
Nov. 20	25,000	"	117,062.50	4.68
Dec. 18	25,000	"	113,797	4.55
1915.				
Jan. 4	$50,000	"	228,500	4.57
" 22	100,000	"	740,220	4.70
" 30	100,000	"	468,180	4.68
Feb. 15	100 000	"	480,420	4.80
[fol 179] Feb. 16	$200,000	M	963,900	4.82
Mar. 4	200,000	"	984,000	4.92
" 10	100,000	"	490,000	4.90
" 12	100,000	"	485,000	4.85

After March, 1915, practically no remittances were cabled owing to the British embargo.

Defendants' Exhibit V

Translation from the German

Property—Revenue office—Schwetzingen.
War-tax list A, #119.
War-tax debit book, #119.

War-tax Notification for Individuals

To Mr. Richard Mayer, in Boston, partner and representative of manufacturer, Edwin Reis, Heidelberg, Germany:

According to the war tax law of June 21, 1916 the exceptional war tax plus extra charge to be paid by you amounts to 266,432.40 M. This amount has been established on ground of the following calculation:

Tax According to Paragraphs 9, #1

Property on which tax is based	783,650	M.
Deductions as per declaration	.....	
Remainder	783,650	M.
Additions as per declaration	.....	M.
Property as per paragraph 7 (round sum)	783,000	M.
Original property	127,000	M.
Increase of property, taxable according to paragraph 9, #1	656,000	M.
Tax	221,900	M.

[fol 180] Tax According to Paragraph 9, #1

Property on which tax is based	783,650	M.
Amount taxable	656,000	M.
Remainder	127,000	M.
Original property 127,360 M.		
Tax exempt		
Total (round sum) 127,000 M.		
Deducted 90 out of hundred	114,300	M.
Increase taxable	12,700	M.
Tax	127	M.
Tax as per paragraph 9, #1 of Tax law	221,900	M.
Sum	222,027	M.
Extra charge as per statute of Apr. 9, 1917	44,405.40	M.
Total Tax	266,432.40	M.

The first payment, one third of the war-tax due, is to be paid within three months after receipt of the War-tax-notification, the other third has to be paid by Nov. 1, 1917 and the last third has to be paid by March 1, 1918 to the Revenue office Postal Check Account #1433, Karlsruhe. The tax-payer can pay the later instalments in advance if he wishes so.

Judgment notes, claims, treasury certificates and war bonds of the German Empire are accepted instead of cash payments. Such bonds or notes are to be sent together with the renewal certificates and coupons to the Badische Bank, Mannheim, or its branch in Karlsruhe, with the request to establish the value of the securities and to return to the sender a receipt about the number of securities turned in.

Complaints are to be made within 14 days from the day the war-tax notification has been delivered.

Through a complaint the instalments due are not to be held up by the taxpayer.

[fol. 181] Received 100,000 M.
Schwetzingen, Nov. 8, 1917. Revenue Office.
(Signature:) Leitsch.

Received 81,468.75 M.
Schwetzingen, Dec. 10, 1917. Revenue office.
(Signature:) Leitsch. Peter Weber, Translator.

JD.

Defendants' Exhibit VI

Translated from the German

Agreement Between, 1, the Firm Reis & Co., Lt., Heidelberg, and, 2, Mr. Gustav Ely, Heidelberg

1

Mr. Gustav Ely enters on July 1, 1913 a position with the firm Reis & Co. as collaborator and confidential Clerk.

2

Mr. Gustav Ely is running at present a cotton-waste-business in Heidelberg. This business is to be dissolved, under the cooperation of the firm Reis & Co. on July 1, 1913, in a manner that all goods unsold by July 1, will be taken over at the cost-price, also the current buying and selling contracts at the prices agreed upon and that the then existing obligations of Mr. Gustav Ely will be met.

3

The firm Reis & Co. enters this deal with July 1, under the condition that it will bring a modest profit into the treasury of the firm Reis & Co. and that the assets at hand will be sufficient to cover the liabilities. The obligations to be covered by Reis & Co. are to be taken in the sense that the incoming and outgoing payments have to go through the treasury of Reis & Co., said firm however does not assume any liability neither for the obligations of Mr. Gustav Ely to Mr. Iggersheimer nor to other persons or firms against Mr. Gustav Ely in connection with contracts or through other legal grounds.

4

The property of Mr. Ely in Wirblingen will be taken over by [fol. 182] Reis & Co. by adding its book-value, that is 38,500 M. to the credit of Mr. Ely; however, Mr. Ely assumes the liability for any loss at an eventual sale of the property; on the other hand any profit that may result through the sale is due Mr. Ely. Aside of this the firm Reis & Co. will be entitled to sell the property of Mr. Ely as soon as at least three fourths (¾) of the above mentioned book-value can be atttained. The surplus resulting from the liquidation of Mr. Ely's business has to remain with Reis & Co.

5

Mr. Ely will receive a yearly salary of 12,000-M. and a yearly royalty of 15 percent of the net profit of the firm Reis & Co. The balance to be drawn according to commercial principals recognized by the partners of Reis & Co., serves as a basis for the calculation of the royalty.

6

The deductions to be made toward the establishment of the net profit are fixed in a manner that 5 percent is to be deducted from the fractional value of the property and buildings and 10 percent from the machines.

If the net profit of a year exceeds the amount of 500,000.-M. the firm Reis & Co. is entitled, on the ground of an understanding with Mr. Ely, to deduct bigger sums and also to accumulate reserves.

In calculating the royalty amount the eventual loss of one year may be carried over upon the next year unless it is not covered by accumulated reserves.

7

The royalties of the rest of the employees as well as the total salary of the partners of the firm per 80,000 M. come under the item of Commercial expenses.

8

This agreement is being concluded for a term of six years. If no notice is served by latest one year before the expiration of this agreement it is considered as prolonged for other four years. Aside of this the firm Reis & Co. is entitled to give a six months' notice [fol. 183] even before the expiration of the agreed time limit in case the firm Reis & Co. should be liquidated.

9

Mr. Ely is pledged to leave three fourths of the royalties due him with the firm Reis & Co. These amounts as well as his other accounts are to yield 4½ percent.

10

From eventual affiliated Companies or from other participations of the firm Reis & Co. in undertakings belonging to the Waste-(cotton-waste)-industry Mr. Ely will also receive the above determined royalty of 5 percent of the net profit.

11

For eventual litigations (quarrels) in connection with this contract it is agreed that the courts in Mannheim are to be considered as competent.

Heidelberg, May 22, 1913.

Reis & Company, Gustav Ely. Peter Weber, Translator.

JSD.

Defendants' Exhibit VII

Translated from the German

Agreement Between the Firm of Reis & Co., Friedrichsfeld, and Mr. Alex Leiser, Zittaw

1

Mr. Alex Leiser starts with a position as traveling salesman December 1, 1910 for the firm Reis & Co. and his place of residence will be Heidelberg.

2

This contract is concluded for four years, i. e. from December 1, 1910 until November 30, 1914.

3

Mr. Leiser will have to make selling and buying trips according to the instructions of the two partners of the firm Reis & Co. whereby each partner of the firm has the right to issue binding [fol. 184] orders. Mr. Leiser is obliged to be on the road all year through if it considered necessary.

However, the firm Reis & Co. is not obliged to occupy Mr. Leiser all year through as a travelling salesman; it is entirely up to the firm to determine how often, how long and in what districts Mr. Leiser is to work as travelling salesman.

Furthermore Mr. Leiser is obliged, in case he is not working on the road, to represent other employees or to perform other commercial services which can be demanded from an employees or to perform other commercial services which can be demanded from an employee holding the position of Mr. Leiser.

4

The yearly salary of Mr. Leiser amounts to 8,000-M. payable in monthly rates, at the end of each month. Aside of this Mr. Leiser is entitled to a 2 percent royalty of the yearly net profit of the firm Reis & Co. The net profit is to be calculated and determined exclusively by the partners of the firm Reis & Co. Bonuses and royalties of the employees come under the item of Commercial expenses.

When on the road Mr. Leiser will receive a lump sum to pay expenses and transportation. On the other hand Mr. Leiser is obliged to submit a specified list of expenses in case the firm Reis & Co. should demand it.

5

Mr. Leiser binds himself that for two years after the cancellation of this contract he will not accept a position in the same or similar business, especially not with the firms:

W. Wolf & Sons, Unterturkheim,
Salomon Bros. Hanover,
Felix Falk, Mannheim,
L. H. Reis, Mannheim,
Isaac Weiss & Co. Muehlhausen,
Degenkolbe & Otto, Crimmitschau,
Arthur Kirstein Hamburg,
[fol. 185] Wilhelm Tichauer, Zittaw,

or their eventual legal successors, nor to erect a similar business for himself or to participate directly in such business.

In case of non-observance of this agreement Mr. Leiser has to pay the amount of 10,000-M. to Reis & Co.

The payment of this fine does not exclude other claims or the reparation of a further loss.

As the same or similar business, according to this contract, are considered Cotton-(Waste) factories, Capok-factories and firms dealing in Waste—(refuse) cotton and "Linters."

6

For eventual quarrels or litigations the regular courts in Heidelberg are competent.

7

Half of the royalty of Mr. Leiser remains in the treasury of Reis & Co. These amounts will yield 4½ per cent interests. The capital of the partners with the firm yield the same amount of interest.

8

Mr. Leiser receives 500.-M. for his transportation expenses from Zittaw to Heidelderg.

9

The firm Reis & Co. takes over the automobile of Mr. Leiser at the price of 6,500.M. payable December 1, 1910.

10

This agreement is signed by both parties and each party keeps one copy.

In case of cancellation of this contract the deposited royalties re-

main for two more years, counted from the day of leaving, in the treasury of the firm Reis & Co.

Zittaw, Oct. 13, 1910.

Alex. Leiser, Reis & Co.

[fol. 186] Supplement to the Agreement Dated October 13, 1910, Between the Firm Reis & Co., Friedrichsfeld, and Mr. Alex. Leiser, Heidelberg

1

The existing agreement is herewith prolonged till November 30, 1918 under the same conditions agreed upon by both parties in October 1910, however with the following modifications:

2

Starting with December 1, 1913 the salary of Mr. Leiser will amount to 12,000 M.

The royalty will be fixed at 5 per cent starting the same date.

Mr. Leiser agrees that the total salary of the partners amounting to 80,000-M. is to be counted as an expense item as it was the case up to now. Mr. Leiser is entitled to look over the balance sheets.

3

Mr. Leiser will receive the collective procuration on July 1, 1913.

4

It is furthermore agreed that an amount of 3,000.-M is being added to the credit of Mr. Leiser for his satisfactory efforts in the real estate deal Scheibe and that his debit account of 3,000.-M for expenses will be covered.

5

In case of an eventual liquidation of the firm Reis & Co. a three months' notice is binding for both parties.

Friedrichsfeld, May 29, 1913.

Reis & Co., Alex. Leiser. Peter Weber, Translator.

JSD.

[fol. 187] DEFENDANTS' EXHIBIT VIII

Translated from the German

Copy

Agreement Between the Firm Reis & Co., Friedrichsfeld, and Mr. Adolf Senft, Heidelberg

Beginning with December 1, 1912 Mr. Adolf Senft will receive, aside of a monthly salary of Mark 400.-, a royalty of ½ per cent (in words: one half per cent) of the net profit of the firm Reis & Co. and the enterprises connected with it.

The balance to be established by the partners of the firm is to serve as basis for the calculation of the royalty.

For his credit with the firm Mr. Senft will be paid 5 per cent interest.

It is agreed by both parties that notice of one year, at the conclusion of a business year, is to be given toward the abrogation of this agreement.

Friedrichsfeld, May 12, 1913.

Reis & Co., Adolf Senft. Peter Weber, Translator.

JSD.

DEFENDANTS' EXHIBIT IX

Translated from the German

Agreement Between the Firm Reis & Co., in Friedrichsfield, and Mr. Friedrich Heinstein, Friedrichsfeld

1. Mr. Friedrich Heinstein is employed with the firm Reis & Co. as commercial representative, according to paragraph 54 of the book for Commercial laws, and it is his duty to perform the work assigned to him with the greatest care and conscientiousness.

2. The task of Mr. Heinstein consists in the independent management of the Sales-Department incl. the management of the sample room, the control of the incoming goods, furthermore the control of the execution of orders (buying and selling), in taking charge [fol. 188] of the main treasury and in taking care of the bills.

In absence of the partners of the firm Reis & Co., Mr. Heinstein has to perform the routine business independently by consulting the office-manager.

Mr. Heinstein will also have to represent other employees in case of necessity and to perform other commercial services that can be asked from an employee holding a position of Mr. Heinstein.

3. The yearly salary of Mr. Heinstein amounts to 4,200 M. payable in monthly rates of 350 M. at the end of each month.

Mr. Heinstein is also entitled to a 1 per cent royalty from the

yearly net profit. The net profit is being established exclusively by the partners of the firm Reis & Co.

Mr. Heinstein has the right to peruse the original balance sheet.

All royalties and bonuses paid to employees are deductible in establishing the net profit from which Mr. Heinstein is to draw a 1 per cent royalty.

An average minimum royalty of 800 M. a year is herewith guaranteed to Mr. Heintsein.

The amounts of Mr. Heinstein's royalties remain in the treasury of the firm Reis & Co. until a total of 10,000 M. is reached.

4½ per cent interests will be paid yearly for such amounts.

In case of cancelation of this contract the deposited royalty-amounts remain for three more years in the treasury of the firm Reis & Co. counted from the day of leaving.

Should Mr. Heinstein however wish to use the deposited royalty-amounts for the purchase of a dwelling-house the firm Reis & Co. will advance the amounts in question to Mr. Heinstein as a loan against a mortgage guaranty on the dwelling house that is to be bought. After expiration of the appointed time of 3 years the mortgage held by the firm Reis & Co. has to be cancelled.

4. Mr. Heinstein binds himself to observe strictest silence about all business procedures, methods and salary conditions even after this contract will be cancelled.

[fol. 189] 5. This contract begins with Dec. 1, 1909 and is concluded for an indefinite time.

A two months' notice for both parties is stipulated to be given on the first day of a calendar-quarter (Jan. 1, Apr. 1, July 1, or October 1).

6. Mr. Heinstein pledges himself neither to accept within three years after the cancelation of this contract a position with a similar firm, especially not with the firms

W. Wolf & Sons, Unterturkheim,
Solomon Bros., Hanover,
Felix Falk, Mannheim,
L. H. Rein, Mannheim,
J. Weiss & Co., Mulhausen, i. e.,
Degenkolbe & Otto, Crimitschau,
Arthur Kirstein, Hamburg,

or their eventual legal successors, nor establish such business for himself or participate directly or indirectly in a similar business.

In case of non-observance of these stipulations Mr. Heinstein has to pay to the firm Reis & Co. a contract-fine of 10,000 (Ten thousand) Mark.

The payment of this fine does not exclude other claims or the reparation of eventual further damages.

As the same or similar business, in the sense of this contract,

are to be taken Woolen—and Capok—factories as well as firms dealing with cotton-waste material.

7. At the cancellation of this contract Mr. Heinstein has to turn over to the firm Reis & Co. all business papers, notes and so forth, he may have in his possession.

8. For eventual quarrels or law suits the regular courts in Heidelberg are competent.

9. This contract is drafted in two copies, each party signs it and each party retains one original copy.

Friedrichsfeld, Sept. 14, 1910.
(Signed) Reis & Co., Friedr. Heinstein. Peter Weber, Translator.

[fol. 190] DEFENDANTS' EXHIBIT XII

Actual Value of Richard Mayer's Share in European Assets of Reis & Co. per April 6th, 1917

Book Value as per Exhibit C—Page 4			M 1,836,353.80
Gain through difference between Book Value of Dec. 31, 1916, and Real Value per Apr. 6, 1917:			
Unliquidated Assets:			
Book Value Dec. 31/16:			
a—Land & Buildings		M 252,037.66	
b—Machinery		35,455.00	
		287,492.66	
Actual Value Apr. 6/17:			
a—Land & Buildings	506,408		
b—Machinery	128,620		
		635,028.00	
Difference		M 347,535.34	
20% of which is			69,507.07
Total			M 1,905,860.87

DEFENDANTS' EXHIBIT XIII

Actual Value of Richard Mayer's Share in European Assets of Reis & Co. per March 26, 1923

Actual Value April 6/17	M 1,905,860.87
Gain through sale of Algersdorf & Franzenthal plants as per Exhibit C—page 16	227,734.95
Difference in actual value between April 6, 1917, and March 26/23 in Unliquidated Assets:	

Value April 6/17:				
a—Land & Buildings			M 506,408	
b—Machinery			128,620	
			M 635,028	
[fol. 191] Value March 26/23:				
a—Land & Buildings	M	36,600,000		
b—Machinery		44,400,000		
			M 81,000,000	
Difference			M 80,364,972	
20% of which is				16,072,995.40
Total				M 18,206,591.22

In United States District Court

Joint Præcipe for Transcript of Record—Filed January 23, 1924

The plaintiff-appellant and the defendants-appellants in the above entitled cause join in the request that the following portions of the record be incorporated into the transcript on appeal to the Circuit Court of Appeals of the United States for the First Circuit, namely:

1. The bill of complaint.
2. The answer of Richard Mayer.
3. The answers of Edwin Reis, Karl B. Strauss and Anny Reis in her own right and as trustee of her minor children.
4. The condensed statement of the evidence.
5. The opinion of the court.
6. The final decree.
7. The respective petitions for appeal.
8. The respective assignments of error.
9. The bonds of defendants-appellants to parties on appeal.
10. The respective citations on appeal.
11. This præcipe.

Elias Field, Special Assistant to the Attorney General, Attorney for Plaintiff-Appellant. Edward F. McClennen, Attorney for Richard Mayer, Defendant-Appellant. Clifford P. Warren, Attorney for Edwin Reis, Karl B. Strauss, and Anny Reis, Defendants-Appellants.

[fol. 192] Citation—In usual form showing service on Edward F. McClennen and Clifford P. Warren; omitted in printing

---

[fol. 193] Citation—In usual form showing service on Elias Field and Clifford P. Warren; omitted in printing

[fol. 194] CITATION—In usual form, showing service on Dunbar, Nutter and McClennen,, and Elias Field; omitted in printing

---

[fol. 195] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, certify that the foregoing is a transcript of the record on appeal including true copies of such proofs, entries and papers on file as have been designated by præcipe as being the portions of the record of said District Court to be included in the record on the appeals of Thomas W. Miller, plaintiff, Richard Mayer, defendant, and Edwin Reis, Karl B. Strauss and Anny Reis, defendants, in the cause in equity entitled—in said District Court determined, together with the original citations and acknowledgments of service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this 24th day of March, A. D. 1924.

James S. Allen, Clerk. (Seal.)

IN UNITED STATES DISTRICT COURT

ORDER ENLARGING TIME—February 23, 1924

For good cause shown, it is ordered that the time for docketing this case and filing the record thereof in the United States Circuit Court of Appeals for the First Circuit be enlarged to and including Monday, March 24, 1924.

Elisha H. Brewster, U. S. District Judge.

[fol. 196] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT, OCTOBER TERM, 1923

No. 1730

THOMAS W. MILLER, Alien Property Custodian, Plaintiff, Appellant,

v.

RICHARD MAYER et al., Defendants, Appellees

No. 1731

RICHARD MAYER, Defendant, Appellant,

v.

THOMAS W. MILLER, Alien Property Custodian, Plaintiff, Appellee

No. 1732

EDWIN REIS et al., Defendants, Appellants,

v.

THOMAS W. MILLER, Alien Property Custodian, et al., Appellees

Appeals from the District Court of the United States for the District of Massachusetts

Before Bingham, Anderson, and Hale, JJ.

OPINION—September 18, 1924

HALE, J.:

In the year 1913 Richard Mayer, a naturalized citizen of the United States and a resident of Boston, formed a partnership under the name of Reis & Company, with Edwin Reis and Ludwig Reis, [fol. 197] residents of Germany, and Karl B. Strauss, a naturalized citizen of Great Britain. The firm had a "regular firm office" in Boston, and established houses in Germany, England and the United States. In 1914 and 1915 Mayer organized two Massachusetts corporations, the Richard Mayer Company and the Anglo-American Cotton Company, and capitalized them with assets of Reis & Company in his hands. By June, 1915, the shares in the Richard Mayer Company were all in Mayer's name except for a few nominal shareholders. The shares in the Anglo-American Cotton Company were in the name of the manager, one Laible, but were indorsed in blank and were in Mayer's possession. By the outbreak of the war between Germany and the United States, April 6, 1917, the partnership was dissolved. The German partners thereafter continued the German business as a going business, and have so continued it on their own account, treating the German assets as their own. It ap-

pears that Mayer, after the outbreak of the war, converted into cash all the American assets except the stock in the Richard Mayer Company and the stock in the Anglo-American Cotton Company, and had the cash invested in his own name. In May, 1918, the Alien Property Custodian seized all the stock of the Richard Mayer Company and of the Anglo-American Cotton Company as the property of Reis & Company. In September, 1918, he seized the securities and cash. In November, 1918, Mayer filed a claim with the Alien Property Custodian for the return of the property, alleging a dissolution of the partnership on the declaration of war, that he had taken all the property over as his own, and that he believed the German partners had no claim on him. In March, 1919, he filed another claim, restating his right to a return of the property. On April 7, 1919, he brought a bill in equity against the Custodian for the return of the property, basing his claim on the alleged dissolution agreement of February 7, 1917, and also on his right to the possession of the American assets to secure his lien and to account for the balance.

This suit, Mayer v. Garvan, Alien Property Custodian, et al., came before the District Court, and by appeal was brought to this court. [fol. 198] This court held (278 Fed. Rep. 27) that the partnership was dissolved upon the outbreak of war, April 6, 1917; that the alleged dissolution agreement of February 7, 1917, was invalid; that, after the declaration of war, all commercial intercourse between the American and German partners was unlawful and opposed to the public policy of the United States. That under the partnership articles, the complainant is entitled upon distribution to have paid him out of the assets of the partnership the amount of his capital investment, within interest, and also 20 per cent of the net profits which had been earned by the partnership, and he is liable for 20 per cent of all losses;

"that, upon the present state of the evidence this court is unable to state an account as between the parties, or Richard Mayer and the Alien Property Custodian, there being no evidence of the actual value of the American property or of the German or English property, and there being no evidence of the liabilities of the firm."

"That the complainant on the dissolution of the partnership with the outbreak of war had a lien on the American assets and their proceeds for what was due him from the partnership on an accounting of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting."

"That the plaintiff is entitled to the immediate repossession of all property so seized and the net proceeds arising therefrom; that the plaintiff shall hold possession of the money and property so delivered to him under the terms and provisions of section 8 (a) of the Trading with the Enemy Act, and of the rights and duties in respect thereof which are set forth in paragraph 10 of this decree."

In June, 1922, such property as remained in the hands of the Alien Property Custodian was returned to Mayer, who immediately

accounted to the Alien Property Custodian, alleging that there was no surplus to be paid over to him. This account was not approved by the Custodian. The Alien Property Custodian then brought suit against Mayer and the German partners to determine their respective shares in the firm assets, joining all parties necessary to a set-
[fol. 199] tlement of the controversy. After a careful hearing, Judge Johnson in the District Court finds the value of Mayer's share of the net assets in Germany on April 6, 1917, to be M. 2,414,-056.12, and that from this sum there should be deducted the sum of M. 266,432.40, the amount paid by the German partners after April 6, 1917, for taxes assessed on Mayer's partnership interest during the years 1914, 1915 and 1916; also that there should be deducted the sum of M. 50,400, paid by the German partners to Mayer's relatives in Germany, all of which, except M. 600 was paid after April 6, 1917. Deducting these amounts, there remains as Mayer's share of the European assets on April 6, 1917, M. 2,097,-223.72; and the District Court holds that the German partners should account to him for that sum as of April 6, 1917. For the purposes of this accounting the District Court finds that the sum of $828,-072.72 represents the value of the American assets for which Mayer should account; and that his share of these assets is 20 per cent or $165,614.54, and that to this sum should be added his interest in the European assets which has been stated in marks.

With reference to the value of the mark, the District Court finds:

"Upon March 30, 1917, the nearest date to April 6, 1917, when the rate of exchange was quoted, the value of the German mark in the currency of the United States was about 18 cents. After the declaration of war there was of course no rate of exchange between the United States and Germany and none was quoted until some time in 1919, when the first quotation of the value of the German mark in the currency of the United States was 7⅞ cents. Upon July 2, 1921, when the state of war was declared to be at an end by the Act of Congress, the German mark had declined to 1.35 cents; and at the time of the beginning of the hearing before me, March 28, 1923, its value was .0048 of a cent, and it is well known that since that time the rate of exchange has further declined. There is no evidence to show the domestic value of the German mark nor whether the decline in the rate of exchange, as shown in this country, correctly expresses the decline in its value in Germany."

[fol. 200] The District Court finds also:

"The decree in this case must be in terms of American dollars. The American assets are measured in terms of the American gold dollar containing gold of a standard weight and fineness. The German assets should be measured by the same yard-stick; that is, by the gold mark which is equivalent to 23.82 cents of the money of the United States, both based upon a gold standard."

The assignments of error challenge substantially all the findings of the District Court. The learned counsel for the Alien Property Custodian and for the German partners urge, with earnestness and

with great learning, that the title to the partnership property was not affected by the outbreak of the war, or by any act of the partners; that Mayer is chargeable with his ratable share of the depreciation in the value of European assets since dissolution; that the accounting to determine the distributive shares of the parties must be stated upon the basis of the present value of the partnership assets; and that the value of the mark should be at the present rate of exchange.

This is not a suit to dissolve a partnership or to obtain an accounting for operations of the partnership after April 6, 1917. It has already been determined that the partnership was dissolved at the above date by the terms of the Trading with the Enemy Act; and by the decree of May 4, 1922, that Mayer is entitled to hold all the assets until his share in the firm assets has been determined.

The law is well settled that in the case of the death of a partner it is the duty of the surviving partners to liquidate within a reasonable time. If they do not so liquidate, but continue the business of their own motion, they become liable for the value of the deceased's share at the time of dissolution. Clay v. Field, 138 U. S. 464, 473; Moore v. Rawson, 185 Mass. 264; Hutchins v. Page, 204 Mass. 284, 290.

We have no doubt that the accounting in this case must be as of the date of dissolution and termination of the partnership, April 6, 1917, on and after which time the German partners conducted the [fol. 201] business in Germany on their own account, treating the assets there located as their own.

The most important question is whether the District Court was right in holding that the German assets should be measured by the gold standard by which the American assets are measured, namely, that they should be measured by the gold mark, equivalent to 23.82 cents of the money of the United States.

In Adams v. Cordis, 8 Pick. 260, 266, the Massachusetts court had before it a case in which a foreign creditor sued for his debt in Massachusetts; and it was held (Chief Justice Parker speaking for the court) that "all the plaintiffs can ask is their debt justly liquidated and paid in the lawful currency of the United States," and "that the debt is to be paid according to the par, and not the rate of exchange."

In Grant v. Healey, Fed. Cases 5696 (3rd Sumner, 523), Judge Story carefully considered Adams v. Cordis, and disagreed with some of the reasoning of Chief Justice Parker; but he held that the suit before him was brought for a balance of account, for advances made at Boston for goods consigned to the plaintiff at Trieste and sold by them at a loss; and that inasmuch as the balance was not payable at Trieste but was payable at Boston, therefore the balance was to be estimated in damages at par and not at the rate of exchange. In Reiser v. Parker, Fed. Cases No. 11,685, 1st Lowell, 262, Judge John Lowell had before him an action to recover a certain number of pounds sterling, payable in London. Judge Lowell discussed fully the cases upon the subject and held that "the only safe rule is to compare the pound and the dollar upon a gold basis." He said: "the pound sterling has always been treated as money here though

foreign money, as a standard of value and not as a commodity. * * * Its value has a known and precise relation to that of our coin, so much so as to have become a question for the court rather than the jury. But it has none to our paper, because the latter is constantly fluctuating. We think it would be unsafe and on the whole likely to work injustice if this value were to be considered an open question in each case."

[fol. 202] In Birge-Forbes Company v. Heye, 251 U. S. 317, 325, and 248 Fed. 636, 640, the Circuit Court of Appeals for the Fifth Circuit and the Supreme Court had before them a case where a German had disbursed marks for his American principal; he sued in the District Court of the United States. It was held that the plaintiff company could recover in dollars at the normal value of the mark; that the German mark should be taken at par, in the absence of evidence that it had depreciated at the time of the plaintiff's payments. The decision was put upon the ground that the purpose of the judgment is to make the plaintiff whole for the amount which he paid out in discharging the obligations of his principal. In Page v. Levefson, 281 Fed. Rep. 555, 557, Judge Rose, in the District Court, comments upon the above case and cites a long list of cases showing the wide divergence of opinion both in the English and in the American courts upon this subject.

In the case at bar the issue before us relates to the amount of surplus, if any, for which Mayer, on April 6, 1917, was accountable in America, in American dollars, to be paid to the Alien Property Custodian of the United States. We think the amount of credit which Mayer may deduct because of his interest in the German assets on April 6, 1917, when they were taken over by the German partners as their own, is to be determined by the value of those assets at that time measured in the same medium of dollars, or by the number of grains of gold, in the two standards, to make them one; and not by the fluctuations in the rate of exchange. The intrinsic value of the mark was the amount of gold contained in .2382 of an American dollar.

The learned counsel for the plaintiff and for the German defendants have brought before us no decisions which support the proposition that the amount of credit described in dollars to which Mayer was entitled on April 6, 1917, on account of the German assets, should be affected by the rate of commercial exchange at any date after April 6, 1917.

The courts have not been in full agreement upon this question; but we think that, upon the evidence brought before us in this suit, [fol. 203] the reasoning and the better authority are in favor of the decision which the District Court has reached.

After the decree of this court in Mayer v. Garvan, in order to obtain a performance of the decree by the Alien Property Custodian, Mayer was obliged to pay out $4,000 as premium on a surety bond conditioned on his performance of any decree to be entered in the case. Mayer insists that this premium should be allowed him as a necessary expense of liquidation and charged against the surplus due the German partners, or, at any rate, against the American

assets, so that the parties would bear the expense ratably between them. As the bond was furnished to enable Mayer to obtain possession of the American assets for the purpose of liquidating and accounting for the same, and was an expense incurred for the benefit of all interested in the liquidation and settlement of the partnership, we think the premium should be allowed as a charge against the firm assets in his hands.

It appears that during the years 1914, 1915 and 1916, the German Government assessed against Mayer's partnership interest certain taxes, in all amounting to 266,432.40 marks. These taxes were paid by the German partner December 10, 1917, some eight months after the outbreak of the war and the appropriation of Mayer's interest by the German partners. The District Court held that this sum might be deducted from the share of Mayer in the European assets. We, however, are of the opinion that this deduction should not have been made. Having appropriated Mayer's interest in those assets to themselves they cannot now claim that they paid the taxes for the purpose of protecting his interest and for his benefit. Whatever authority they may have had prior to the outbreak of the war had been terminated at the time the payments were made. It is plain that they did not act as trustees and for the protection of his interest, for that interest they had appropriated to themselves.

In the District Court the sum of 50,400 marks was also allowed to be deducted from Mayer's share in the European assets. It appears that all of this sum, except 600 marks, was paid by the German partners to Mayer's relatives after the declaration of war on [fol. 204] instructions received from Mayer prior to the outbreak of the war. Counsel for the Alien Property Custodian contends that the German partners were entitled to have these payments considered, even though the authority therefor was terminated by the outbreak of war, on the ground that they were made by them as trustees holding Mayer's interest. We, however, do not think that these payments, except the 600 marks paid before the outbreak of war, should have been allowed. Whatever authority the German partners had received from Mayer prior to the war to make these payments was ended by the war and, as we have pointed out above, on the outbreak of the war, the German partners appropriated Mayer's interest to themselves, so that they held no interest of his to protect.

We also think that Mayer's claim for counsel fees and other disbursements incurred in the prosecution of the suit of Mayer v. Garvan should be charged against the assets in Mayer's hands as liquidation expenses. In that suit he did not rest his claim to the possession of and the right to liquidate the American assets simply upon the dissolution agreement of February 7, 1917, but also upon his right to the possession of the property to secure his lien thereon and to account. On the latter issue he prevailed and the reasonable expenses incurred were necessary liquidation expenses and should also be charged against the assets in Mayer's hands.

The amount of such expenses will, of course, have to be determined on further hearing in the District Court.

Judge Johnson has found that the German partners could not determine the distributive share of Mayer in the firm assets; and, if they had been able to do so, they could not pay any part of his share to him while a state of war continued between Germany and the United States. "They are not, therefore, liable for payment of interest upon his distributive share." Mayer urges that he was wrongfully deprived of his property and should be left as well off as if the wrong had not been done him; that the Alien Property Custodian seized the property wrongfully, as that of the enemy partners; that he, an American citizen, ought to come out whole, [fol. 205] as he had done nothing wrong; and that, thus, he should have his interest, or money in lieu of interest, on his distributive share. A majority of the court think the District Court was right in disallowing this claim for interest or compensation for the loss of use of his property.

The sum or sums set aside by the German partners as reserves to meet losses, and paid out by them after the outbreak of war, and during the years 1918, 1919 and 1920, when they were conducting the business on their own account, were properly disallowed as a liability.

We think the District Court acted with a proper sense of the equitable rights of the parties in making its decree with reference to the claim of Laible for interest, and its order of the deposit of $7,000 with Mr. McClennen, as an officer of the court, under the terms imposed by the court. We think the District Court acted under the principles of equity in passing upon the question of the claim of the United States for the amount paid on account of the loss of cargo on the Carolyn. We do not see how any further order can now be made in this matter.

The decree of the District Court, as to the premium of $4,000, counsel fees and disbursements, taxes and payments to relatives is modified as above pointed out, and so modified it is affirmed with costs in this court to Mayer, to be satisfied in Nos. 1730 and 1731 from any surplus payable to the Custodian and in No. 1732 by Reis et al.

[fol. 206] In United States Circuit Court of Appeals

[Titles omitted]

Final Decree—September 18, 1924

This cause came on to be heard April 23, 24 and 25, 1924, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel:

Upon consideration whereof, It is now, to wit, September 18, 1924, here ordered, adjudged and decreed as follows: The decree of the District Court, as to the premium of $4,000, counsel fees and disbursements, taxes and payments to relatives is modified in ac-

cordance with the opinion passed down this day, and as so modified it is affirmed with costs in this court to Mayer, to be satisfied from any surplus payable to the Custodian.

By the Court.

Arthur I. Charron, Clerk.

In United States Circuit Court of Appeals

Final Decree—September 18, 1924

This cause came on to be heard April 23, 24 and 25, 1924, upon the transcript of record of the District Court of the United States for the District of Massachusetts, and was argued by counsel:

Upon consideration whereof, It is now, to wit, September 18, 1924, here ordered, adjudged and decreed as follows: The decree of the District Court, as to the premium of $4,000, counsel fees and dis-[fol. 207] bursements, taxes and payments to relatives is modified in accordance with the opinion passed down this day, and as so modified it is affirmed with costs in this court to Mayer.

By the Court.

Arthur I. Charron, Clerk.

[fol. 208] In United States Circuit Court of Appeals

Petition of Thomas W. Miller for Appeal and Order Allowing Same—Filed December 10, 1924

Thomas W. Miller, Alien Property Custodian of the United States being aggrieved by the final decrees entered in the above-entitled cases on or about September 18, 1924, affirming with modifications the decree of the District Court of the United States for the District of Massachusetts entered October 2, 1923, does hereby appeal to the Supreme Court of the United States from said decrees.

The particulars in which your petitioner considers the said decrees erroneous are set forth in the asignment of erro-s herewith filed to which reference is hereby made.

Your petitioner further prays that a transcript of the record and proceedings and the appeal papers upon which said appeal was made, duly authenticated, may be transmitted to said Supreme Court.

Thomas W. Miller, Alien Property Custodian, by His Solicitor, Elias Field, Special Assistant to the Attorney General.

This appeal may be allowed December 10, 1924.

George H. Bingham, Judge of the United States Circuit Court of Appeals for the First Circuit.

In United States Circuit Court of Appeals

Assignments of Error of Thomas W. Miller—Filed December 10, 1924

Thomas W. Miller, as Alien Property Custodian, in connection with his petition for appeal from the final decrees entered on or about September 18, 1924, in the above entitled cases, affirming with modifications the decrees of the District Court of the United States for the District of Massachusetts entered on or about the 2nd day of October, 1923, presents the following assignment of errors upon which he will rely in said appeal:—

1. In holding and ruling that Richard Mayer's distributive share in the European assets of the partnership of Reis & Company ascertained in German marks should be translated into American dollars at the rate of $.2382.

2. In failing to hold and rule that the number of German marks payable to Richard Mayer as his distributive share in the European [fol. 209] assets of the partnership must be translated into dollars at the rate of exchange current at the date when the accounting was stated in this proceeding.

3. In failing to hold and rule that the Alien Property Custodian was entitled to $661,584.26 as the enemy share of the American assets of the partnership of Reis & Company.

4. In holding and ruling that the German partners after April 6, 1917 continued the German business of the partnership on their own account treating the German assets as their own.

5. In failing to hold and rule that Richard Mayer continued the American business of the partnership after April 6, 1917 as a going business on his own account without authority therefor from his partners.

6. In holding and ruling that the intrinsic value of the German marks in which the German assets of the partnership was measured was the amount of gold contained in .2382 of an American dollar.

7. In holding and ruling that Richard Mayer is entitled to charge against the firm assets in his hands, the sum of $4,000 paid out by him as a premium on a surety bond.

8. In holding and ruling that Richard Mayer was not chargeable on a partnership accounting for the sum of 266,432.40 marks paid by the German partners as taxes upon Mayer's interest in the partnership property in Germany assessed during the years 1914, 1915, and 1916.

9. In holding and ruling that Richard Mayer was not chargeable with the sum of 50,400 marks paid by the direction of Mayer to his relatives in Germany.

10. In holding and ruling that on the outbreak of the war the German partners appropriated Richard Mayer's interest to themselves, so that they held no interest of his to protect.

11. In holding that Richard Mayer's claim for counsel fees and other disbursements incurred in the prosecution of the former suit of Mayer vs. Garvan should be charged against the Alien Property Custodian's share of the assets in Mayer's hands on accounting.

12. In holding and ruling that the liability for reserves as shown on the balance sheet of the partnership on December 31, 1916, should not be allowed as a liability of the firm in a partnership accounting.

13. In failing to hold and rule that the European assets of the partnership have depreciated in value—as measured in currency of the United States—because of the depreciation in the value of German currency.

[fol. 210] 14. In failing to hold and rule that no fault or neglect on the part of individual partners caused the depreciation in the value of the European assets of the partnership since the declaration of war.

15. In holding and ruling that none of the depreciation in the value of the European assets of the partnership after dissolution is chargeable to Richard Mayer.

16. In holding and ruling that the Alien Property Custodian is chargeable with the value of Mayer's share in the European assets at the time of dissolution, without allowance for depreciation in the value of those assets thereafter.

17. In holding and ruling that the enemy share of American assets payable to the Alien Property Custodian on account is to be diminished because of the failure of the German partners to liquidate the European assets after the outbreak of war.

18. In holding and ruling that Richard Mayer was entitled to a credit on April 6th, 1917 on account of the German assets of the partnership.

19. In failing to hold and rule that Richard Mayer was not entitled to any credit on account of the German assets of the partnership until an accounting of all the affairs of the partnership could be had.

20. In failing to hold and rule that the equitable title to the partnership property remains unaffected by the outbreak of the war or by any act of the partners until final accounting and distribution.

Thomas W. Miller, Alien Property Custodian, by His Solicitor, Elias Field, Special Assistant to the Attorney General.

[fol. 211] In United States Circuit Court of Appeals

Petition of Edwin Reis, Karl B. Strauss, and Anny Reis, Defendants, for Appeal and Order Allowing Same—Filed December 10, 1924

The defendants, Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children, being aggrieved by the final decrees entered in the above entitled causes on or about September 18th, 1924 affirming with modifications the decree of the District Court of the United States for the District of Massachusetts entered October 2nd, 1923, do hereby appeal to the Supreme Court of the United States from said decrees.

The particulars in which your petitioners consider the said decrees erroneous are set forth in the assignment of errors herewith filed to which reference is hereby made.

Your petitioners further pray that a transcript of the record and proceedings and the appeal papers upon which said appeal was made, duly authenticated, may be transmitted to said Supreme Court.

Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children, Edwin Reis, Karl B. Strauss, by Their Attorney, Morris Buchter.

[fol. 212] This appeal is allowed Dec. 10th, 1924.

George H. Bingham, Judge of the United States Circuit Court of Appeals for the First Circuit.

In United States Circuit Court of Appeals

Assignments of Error of Edwin Reis et al—Filed December 10, 1924

The defendants Edwin Reis, Karl B. Strauss and Anny Reis, in her own right and as widow of Ludwig Reis and as trustee for her minor children, in connection with their petition for appeal from the final decrees entered on or about September 18th, 1924 in the above entitled cases affirming with modifications the decree of the District Court of the United States for the District of Massachusetts entered on or about the 2nd day of October, 1923, jointly and severally present the following assignments of error upon which they will rely in said appeal.

The court erred:

1. In holding and ruling that Richard Mayor's distributive share of the European assets of the partnership of Reis & Company ascertained in German marks should be translated into American dollars at the rate of $.2382.

2. In failing to hold and rule that the term "marks" as used by the German partners in the accounting of the partnership assets in Germany and as used by the witness Edwin Reis, in his testimony at the trial referred to the then current paper marks as distinguished from gold marks.

3. In holding and ruling that the marks in question in *this* case had any intrinsic value in gold at any time after the passage of the German legal tender acts.

4. In holding and ruling that the intrinsic value of the German marks in which the German assets of the partnership were measured was the amount of gold contained in .2382 of an American dollar.

5. In failing to hold and rule that the number of German marks payable to Richard Mayer as his distributive share in the European assets of the partnership must be translated into dollars at the rate of exchange current at the date when the accounting was stated in this proceeding.

6. In holding and ruling that Richard Mayer was entitled to a credit on April 6th, 1917 on account of the German assets of the partnership.

7. In failing to hold and rule that Richard Mayer was not entitled to any credit on account of the German assets of the partnership until an accounting of all the affairs of the partnership could be had.

8. In holding and ruling that the Alien Property Custodian is chargeable with the value of Mayer's share in the European assets at the time of dissolution, without allowance for depreciation in the value of those assets thereafter.

[fol. 213] 9. In holding and ruling that Richard Mayer should not share the losses occasioned by the depreciation in the value of the European assets of the partnership after dissolution.

10. In failing to hold and rule that the title to the partnership property remains unaffected by the outbreak of the war or by any act of the partners until final accounting and distribution.

11. In failing to hold and rule that the European assets of the partnership have depreciated in value—as measured in currency of the United States—because of the depreciation in the value of German currency.

12. In failing to hold and rule that no fault or neglect on the part of the individual partners caused the depreciation in the value of the European assets of the partnership since April 6th, 1917.

13. In holding and ruling that the German partners became liable for the value of Richard Mayer's share of the German assets at the time of dissolution on account of failure to liquidate.

14. In failing to hold and rule that no loss whatsoever was sustained in this case by failure to liquidate.

15. In holding and ruling that the German partners after April 6th, 1917 continued the German business of the partnership on their own account, treating the German assets as their own.

16. In failing to hold and rule that Richard Mayer continued the American business of the partnership after April 6th, 1917 as a going business.

17. In holding and ruling that Richard Mayer's distributive share in the European assets of Reis & Company is 2,364,056.12 marks, arrived at as follows: 2,097,223.72 marks found by the District Court as Richard Mayer's share; 226,432.40 marks paid by the German partners to the German Government as taxes levied against Mayer's share of the German assets, and disallowed as a credit in the account of the German partners by the Circuit Court of Appeals; 50,400 marks paid by the German partners to Mayer's relatives at his request, and also disallowed as a credit in the account of the German partners by the Circuit Court of Appeals.

18. In failing to hold and rule that Richard Mayer's distributive share in the European assets of Reis & Company as of April 6th, 1917, is 18,206,591.22 marks exclusive of profits since that date or interest or the sum of 27,000,000 marks inclusive of profits or 19,121,404.44 marks inclusive of interest.

19. In failing to hold and rule that the Alien Property Custodian was entitled to $661,584.26 as the German partners' share of the American assets of the firm of Reis & Co.

[fols. 214-216] 20. In holding and ruling that the sum of 956,-814.31 marks set aside by the German partners for reserves should not be included among the liabilities to the payment of which Richard Mayer's share should contribute.

21. In holding and ruling that Richard Mayer is entitled to charge against the firm assets in his hands the sum of $1,000.00 paid out by him as a premium on a surety bond.

22. In holding and ruling that Richard Mayer was not chargeable on a partnership accounting for the sum of 266,432.40 marks paid by the German partners as taxes upon Mayer's interest in the partnership property in Germany assessed during the years 1914, 1915 and 1916.

23. In holding and ruling that Richard Mayer was not chargeable with the sum of 50,400 marks paid by the direction of Mayer to his relatives in Germany.

24. In holding and ruling that Richard Mayer's claim for counsel fees and other disbursements incurred in the prosecution of the former suit of Mayer v. Garvan should be charged against the Alien Property Custodian's share of the assets in Mayer's hands.

25. In failing to hold and rule that the claims of the employees Eli, Leiser, Sanft and Heinstein for percentages of profits of the firm constitute liabilities of the co-partners, and in failing to make provision in the decree of the payment of these liabilities.

Edwin Reis, Karl B. Strauss, Anny Reis, in her own right and as widow of Ludwig Reis and as Trustee for her minor children, by Their Solicitor, Morris Buchter.

Bond on Appeal for $250.00 —Approved and filed Dec. 10, 1924; omitted in printing

---

[fol. 217] In United States Circuit Court of Appeals

Petition of Richard Mayer for Appeal and Order Allowing Same—Filed December 13, 1924

Richard Mayer, the defendant, being aggrieved by a part of the final decrees entered in the above entitled cases pursuant to a decision of the said Court handed down on or about the eighteenth day of September 1924 does hereby appeal to the Supreme Court of the United States from said decrees in respect to said part as more fully appears in the Assignment of Errors which is filed herewith and prays that his claim of appeal may be allowed and that a transcript of the record, proceedings and papers on which the said decrees were based, duly authenticated, may be sent to said Supreme Court of the United States.

Richard Mayer, by His Attorney, Edward F. McClennen.

This appeal is allowed December 13, 1924.

George H. Bingham, Senior Presiding Judge of the United States Circuit Court of Appeals for the First Circuit.

In United States Circuit Court of Appeals

Assignment of Errors of Richard Mayer—Filed December 13, 1924

Richard Mayer, defendant-appellant, assigns as the errors in the proceedings and in the decrees entered pursuant to the decision of the Circuit Court of Appeals for the First Circuit handed down on or about the eighteenth day of September, 1924 in the above entitled causes on which errors he, the said appellant, will rely in the prosecution of his appeal from said decree, that:

Richard Mayer should have been allowed interest or other compensation for loss of use of the property taken without right by the Alien Property Custodian in 1918 claiming it as the property of Mayer's German former partners and until its return in 1922.

Richard Mayer, by His Attorney, Edward F. McClennen.

[fol. 218] Bond on Appeal for $500.00—Approved and filed Dec. 13, 1924; omitted in printing

---

[fol. 219] Citation—In usual form, showing service on Edward McClennen and Morris Buchter; omitted in printing

---

[fol. 220] Citation—In usual form, showing service on Elias Field and Edward McClennen; omitted in printing

---

[fol. 221] Citation—In usual form, showing service on Elias Field and Morris Buchter; omitted in printing

---

[fol. 222] In United States Circuit Court of Appeals

Clerk's Certificate

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the foregoing is the transcript of record on appeal including copies of such papers on file as have been indicated by the parties in their præcipes in the causes in said Court numbered and entitled as follows: [Title omitted] in said Circuit Court of Appeals determined, together with the original Citations issued with acknowledgments of service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit at Boston, in said First Circuit this seventeenth day of December, A. D. 1924.

Arthur I. Charron, Clerk. (Seal of United States Circuit Court of Appeals, First Circuit.)

Endorsed on cover: File Nos. 30,771, 30,772, 30,773. U. S. Circuit Court of Appeals, First Circuit. Term No. 232. Thomas W. Miller, as Alien Property Custodian, appellant, vs. Richard Mayer, Edwin Reis, Karl B. Strauss, et al., etc. Term No. 233. Richard Mayer, appellant, vs. Thomas W. Miller, Alien Property Custodian, Edwin Reis, Karl B. Strauss, et al., etc. Term No. 234. Edwin Reis, Karl B. Strauss, and Anny Reis, etc., appellants, vs. Richard Mayer and Thomas W. Miller, as Alien Property Custodian. Filed December 29th, 1924. File Nos. 30,771, 30,772, 30,773.

SUPREME COURT OF THE UNITED STATES

October Term 1925

Nos. 232, 233, 234

ALIEN PROPERTY CUSTODIAN,
Appellant,
v.
RICHARD MAYER ET AL.,
Appellees.

RICHARD MAYER,
Appellant
v.
ALIEN PROPERTY CUSTODIAN ET AL.,
Appellees.

EDWIN REIS ET AL.,
Appellants,
v.
RICHARD MAYER ET AL.,
Appellees.

BRIEF FOR RICHARD MAYER

Time as of which acct. 9/6.1917

Items left off "mark"

Use of assets to Richard Mayer

INDEX

	Page
Proceedings in Courts Below	5
Outline of Facts	7
Statement of Amount of Mayer's Lien and Share	12
1. The Courts below erred in allowing nothing to Mayer for interest or loss of use of the property from the time of its wrongful seizure in 1918 to the time of its return in 1922 (Mayer assignment, R. 162)	18
2. The Courts below rightly failed to provide in the decree for allowances to German employees (Reis assignment 25, R. 162)	22
3. The Court of Appeals rightly held the $4,000 paid for a bond, to be an expense of liquidation (A. P. C. assignment 7, R. 157; Reis assignment 21, R. 161)	24
4. The Court of Appeals rightly held that the cost of regaining possession of the property was an expense of liquidation (A. P. C. assignment 11, R. 158; Reis assignment 24, R. 161)	25
5. The Courts below rightly held that reserves were not a debt (A. P. C. assignment 12, R. 158; Reis assignment 20, R. 161)	26
6. The Court of Appeals rightly held that Mayer was not obliged to account to the Alien Property Custodian for sums paid after April 6, 1917 by his former German partners for German taxes on Mayer individually (A. P. C. assignment 8, R. 157; Reis assignments 17, 22, R. 161)	28

Page

7. The Court of Appeals rightly held that Mayer was not obliged to account to the Alien Property Custodian for sums paid without his continued authority after April 6, 1917 by his former German partners to his relatives (A. P. C. assignment 9, R. 157; Reis assignments 17, 23, R. 161) 31

8. The Courts below rightly took April 6, 1917 for accountability (A. P. C. assignments 3-5, 10, 13-20, R. 157, 158; Reis assignments 5-16, 18, 19, R. 160, 161) 33

9. The Courts below rightly defined in English the German word mark used in a United States Court (A. P. C. assignments 1, 2, 3, 6, R. 157; Reis assignments 1-4, 19, R. 159-161) 52

Conclusion 57

Proceedings in Courts below

The Alien Property Custodian filed this bill in the District Court September 6, 1922, against Richard Mayer — a citizen of the United States, the Richard Mayer Company, the Anglo-American Cotton Company — Massachusetts Corporations, Edwin Reis, Karl B. Strauss, the Estate of Ludwig Reis, and Anny Reis — citizens and residents of Germany. It sets forth the partnership formed in 1914, between Richard Mayer and the German partners, the seizure of property in 1918 by the Alien Property Custodian, the suit of Richard Mayer against the Alien Property Custodian begun April 7, 1919 to recover this property, the final decree for the return of this property, and the actual return of the property in 1922 by the Alien Property Custodian to Mayer. The bill prays (1) that Mayer be ordered to disclose the present value in cash of the assets of Reis & Co. within his possession and control, (2) that the German partners make a disclosure of the assets in their control, (3) that Mayer be surcharged, (4) that the amount due Mayer from the partnership be determined as of the date of the final decree hereunder and Mayer and the corporations be ordered to deliver the surplus after the satisfaction of the amount due him, to the Alien Property Custodian, (5) that Mayer be credited with the value of his interest in the European assets, (6) for process, (7) for general relief.

Mayer and the corporations answered, setting up that he had accounted to the Alien Property Custodian, as per a copy of the account annexed, on June 15, 1922, and admitting and denying, respectively, the different paragraphs of the bill.

The **German defendants** answered, generally admitting the allegations of the bill in the first six paragraphs of their answer, and followed this by a **reply to Mayer's answer,** in paragraphs seven to sixteen inclusive of their answer. On Mayer's motion at the opening of the trial, to strike out the seventh to the sixteenth paragraphs of this answer, the

German defendants waived the seventh to the tenth paragraphs inclusive. They are not before the Court. Exhibit II to this answer was an argument as to the accounts. This was not admitted in evidence and is not before the Court. Exhibits III, IV and V pertain to paragraphs seven to ten of the answer, and were waived with those paragraphs. Exhibit A (pages 1-8, R. 49-53), Exhibit B (pages 1-7, R. 54-56) and Exhibit C (pages 1-16, R. 57-65), purported to be an accounting by the German partners.

The case was heard in the District Court, before Circuit Judge Johnson, beginning March 26, 1923. He decided mainly in Mayer's favor (R. 68-74). A decree was entered accordingly on October 22, 1923 (R. 66, 67). All parties appealed to the Circuit Court of Appeals. The Circuit Court of Appeals decided more favorably to Mayer (R. 149-155). A decree was entered accordingly in the Circuit Court of Appeals September 18, 1924 (R. 155). All parties have appealed to the Supreme Court of the United States.

Outline of the Facts

In 1913 the defendant Richard Mayer became a partner with the defendants Edwin Reis, Karl B. Strauss, and Ludwig Reis (deceased) as Reis & Co., with established houses in Germany, England and the United States. That in the United States, at Boston, was not a mere agency (Garvan Record, p. 97; Opinion, Garvan Record, p. 177). In 1914 and 1915, Mayer organized the Richard Mayer Company and the Anglo-American Cotton Company — Massachusetts corporations — and capitalized them with assets of Reis & Co. in his hands. By June 8, 1915, the shares in the Richard Mayer Company were all in Mayer's name except for a few nominal holders to qualify them as directors (Garvan Record, p. 64; Opin., Garvan Record, p. 178). The shares in the Anglo-American Cotton Company were in the name of Laible, employed as manager. The certificates were endorsed in blank and were in Mayer's possession (Garvan Record, p. 65; Opin., Garvan Record, p. 178; Laible, Record, p. 124).

In 1914 and 1915, Reis & Co. remitted from Germany to Boston upwards of $2,000,000 for the purchase of goods for export. Exportation continued until about the time of the British Orders in Council of March, 1915 (Garvan Record, p. 65; Opin., Garvan Record, p. 178; Garvan Record, p. 97). The unexpended balance of this money constituted the larger part of the assets in America.

In the early part of 1916 Laible was in Germany and there discussed with the German partners the desire of Mayer for a dissolution. They were willing to have a dissolution, but no definite steps were taken (Strauss, Garvan Record, p. 98; Laible, Garvan Record, p. 173; R., p. 124). After his return Laible reported this conversation to Mayer later in 1916, and informed Mayer that the assets of the partnership in Europe had grown so large that Mayer, on dissolution, would be entitled to have as his share of the whole assets, as much as the assets in America (Laible, Garvan Record, p. 173; R. pp. 93–94).

Under date of February 7, 1917, after the breaking off of diplomatic relations between the United States and Germany, an agreement of dissolution was drawn, whereby in event of war the partnership was to be dissolved and the German partners were to retain for themselves the European assets and Mayer was to retain for himself the American assets. Mayer did not know of this agreement until the Spring of 1919. This agreement was held invalid by the Circuit Court of Appeals.

The partnership was dissolved by the outbreak of war April 6, 1917, and thereupon the German partners continued the German business as a going business, and have so continued it for more than six years and as late as the proceedings in the District Court in 1923.

Soon after the outbreak of war, Mayer decided to take the stand that, in view of the conversation as to dissolution which Laible had with the German partners the preceding year, and in view of the relative value of the German assets and of the American assets, he would treat the American assets as his own, and Reis & Co. as having no interest therein.

Mayer had converted all the assets, except the stock in the Richard Mayer Company and the stock in the Anglo-American Cotton Company, into cash, and had invested the cash in his own name.

On May 28, 1918, the Alien Property Custodian seized all the stock of the Richard Mayer Company and of the Anglo-American Cotton Company as the property of Reis & Co. On September 20, 1918, he seized the securities and the cash.

On November 6, 1918, Mayer filed a claim with the Alien Property Custodian for a return of the property, asserting that the partnership was dissolved on the declaration of war April 6, 1917, and that he had taken all the property over as his own, and that he believed the German partners had no claim upon it (Garvan Record, p. 28). On March 31, 1919, he filed another claim, reiterating his right to a return of the property (Garvan Record, p. 26). On April 7, 1919, he

brought suit against Francis P. Garvan, the Alien Property Custodian, for a return of the property, basing his claim on the dissolution agreement above referred to and also on his right to the property because he had taken it for his own and it was not in excess of his share.

When the Alien Property Custodian took control, the Anglo-American Cotton Company had a net worth of $113,977.17 (Ex. Q; Mayer's Ans., Ex. A, R. 41). It became a total loss (Ex. Q).

On the issues made by the pleadings, the Court in *Mayer* v. *Garvan* found the facts and stated them in detail (Garvan Record, p. 177) substantially in accordance with Mayer's contentions and ruled that the dissolution agreement had no legal validity but that Mayer was entitled to a return of the property to satisfy his lien thereon for his share, with the duty to account to the Alien Property Custodian for any surplus after such satisfaction.

June 7, 1922, such property as remained in the hands of the Alien Property Custodian was returned to Mayer.

He immediately made accounting to the Alien Property Custodian showing that there was no surplus to be paid over to him. This account was not approved by the Custodian. The present suit followed. The facts appear in more detail in the record in the Garvan Case, which by agreement of the parties was before the District Court and the Circuit Court of Appeals in the case at bar (R. 80).

In the District Court in the present case, Judge Johnson decided, as had been held in *Mayer* v. *Garvan*, 278 Fed. 27, that the partnership was dissolved by the outbreak of war, and that Mayer had, on April 6, 1917, a lien on the American assets and their proceeds for what was then due him, and was entitled to retain the American assets in his hands until this amount was satisfied. He found that Mayer's share in the German assets, which consisted of real estate, plants, machinery, merchandise, accounts receivable and cash — if expressed in terms of marks was then 2,414,056.12, and that

the value of his share was $574,775.26. He found that Mayer admitted the value of the partnership property in America at that time to be $910,014.07.

Deducting from these American assets a partnership claim of Laible's subsequently paid — $27,175.88, left $882,838.19. Mayer was a twenty per cent. partner. Twenty per cent. of this was $176,567.63. This added to the $574,775.26, gave Mayer's share April 6, 1917, $751,342.89.

Judge Johnson found that there was no evidence to show the domestic value in Germany of the German mark in dollars, or whether the decline in the rate of foreign commercial exchange as shown in this country correctly expressed the decline in the value of the mark in Germany. He decided that the same measure — the gold standard — should be applied to both classes of assets, and that the rate of foreign exchange on paper marks was not the criterion. This decision would have left Mayer entitled on April 6, 1917, to the above amount of $751,342.89. From this amount Judge Johnson deducted certain charges against Mayer and he declined to allow him certain credits which are discussed hereinafter under the appropriate headings.

The Circuit Court of Appeals (R. 149–155) decided in most respects the same as the District Court. The firm of Reis & Co. had a regular firm office in Boston (R. 149). Before the outbreak of war the shares in the two corporations were in Mayer's name or possession (R. 149). By the outbreak of war April 6, 1917 the partnership was dissolved (R. 149). The German partners thereafter continued the German business as a going business and have so continued it on their own account, treating the German assets as their own (R. 149). Mayer, after the outbreak of the war, converted into cash all the American assets except the stock in the two companies and invested the cash in his own name (R. 150). The seizure of the property by the Alien Property Custodian was as the property of Reis & Co. (R. 150). There was no quotation on the foreign commercial exchange value of the

German mark April 6, 1917. There was no evidence to show the value, in Germany, April 6, 1917, of the German mark, or whether the decline in the rate of exchange as shown in this country correctly expressed the decline in the value in Germany (R. 151). This is not a suit to dissolve a partnership or to obtain an accounting for the operations of the partnership after April 6, 1917 (R. 152). By the final decree of May 4, 1922 in the Garvan suit, Mayer is entitled to hold all the assets until his share in the firm assets has been determined (R. 152). As the German partners did not liquidate but continued the business of their own motion, they became liable for the value of Mayer's share of the German assets at the time of the dissolution April 6, 1917 (R. 152). The German assets and the American assets must be measured by a common standard, unaffected by the fluctuations of commercial foreign exchange (R. 173). The $4,000 which Mayer was obliged to pay out as a premium on the surety bond to get back the property, should be allowed as a necessary expense of liquidation (R. 153). As the German partners had appropriated the German assets to themselves, they cannot claim that the moneys paid after the outbreak of war for German taxes were for the purpose of protecting Mayer's interest or for his benefit. Their authority to make any payments for him had terminated before the payments were made (R. 154). The payments made to Mayer's relatives after his authority to make them had terminated on the outbreak of war, should not be allowed (R. 154). Mayer's expenses for counsel fees and other disbursements incurred in the prosecution of the suit against Garvan, should be charged as liquidation expenses incurred by him to get possession of the property in liquidation (R. 154). A majority of the Court were of opinion that Mayer was not entitled to anything between the time when he was wrongfully dispossessed of the property by the Alien Property Custodian and the time when the Custodian returned it to him in obedience to the decree in the Garvan case (R. 155). Reserves and

losses in 1918, 1919 and 1920, when the German partners were conducting the business on their own account, were properly disallowed as a liability (R. 155).

The results of these decisions, and the amounts involved in the various errors assigned, appear in the following schedule: —

Mayer's Share

Value of Mayer's share taken over by the German partners Apr. 6, 1917, as found by Courts as per details below (R. 151, 69)....			$574,775.26
Assets in America Apr. 6, 1917, as so found (R. 69).....		$910,014.07	
Firm debt to Laible, subsequently paid (R. 31)	$27,175.88		
Claimed liability in "Carolyn" case (R. 74), settled Sept. 29, 1925 by agreement of all parties for.....	31,297.51		
		58,473.39	
Mayer's 20% of.....		$851,540.68	170,308.13
Apr. 6, 1917, Mayer's share and lien.....			$745,083.39
Proper compensation for loss of this from wrongful seizure by Alien Property Custodian in 1918 to its return June 7, 1922 (disallowed by majority of Circuit Court of Appeals (R. 155).....			175,000.00
			$920,083.39

Amount which Mayer was entitled to receive back and to retain for himself June 7, 1922			$920,083.39
Amount received back by Mayer as of June 7, 1922, as found by the Courts below (R. 151, 69) as per details below		$828,072.72	
Liquidation expense for bond as found by Circuit Court of Appeals (R. 153)	$4,000.00		
Paid in settlement of "Carolyn" claim Sept. 29, 1925	31,297.51		
Interest claimed by Liable from partnership — in suspense (R. 73)	6,475.28		
Counsel fees and other disbursements (amounts to be determined in the District Court) to regain possession of the property wrongfully seized (R. 154)	x x x x x		
Total of deductions, not including above undetermined amount for counsel fees and disbursements		$41,772.79	
Balance			$786,299.93
Deficiency for Mayer's share and lien, not including the above counsel fees and disbursements			$133,783.46

Details of $574,775.26 — The First Item Above

Dec. 31, 1916 book value gross assets in Germany (Reis, Ans., Ex. A, R. 49-53, R. 87)	M15,802,922.33	
Admitted excess value of land and buildings 506,498 over book value 252,037.66	254,370.34	
Admitted excess machinery value 128,620 over book value 35,455	93,165.00	
Total gross assets Dec. 31, 1916		$16,150,457.67
Gross liabilities and reserves (Ex. A., R. 49-53, R. 87)	4,313,753.92	
Deduct reserves (Garvan Record, p. 146, R. 87; C. C. A. R. 155; D. C. R. 69)	956,814.31	
Total gross liabilities in Germany		3,356,939.61
Dec. 31, 1916 net assets in Germany at real value		M12,793,518.06

Restatement of Above

Dec. 31, 1916 book net assets (Ex. A., R. 51, R. 87)	M11,489,168.41	
Admitted reserves above	956,814.31	
Admitted excess value of land and buildings	254,370.34	
Admitted excess value of machinery	93,165.00	12,793,518.06

Mayer's Share in the German Assets April 6, 1917.

Mayer's interest per books Dec. 31, 1916 (Ex. A., R. 52)	M2,107,499.89
Mayer's 20% of excess value of land and buildings over book value	50,874.06
Mayer's 20% of excess value of machinery over book value	18,633.00
20% of above reserves withheld from Mayer's account	191,362.86
Apr. 6, 1917 Mayer's share of profits from Dec. 31, 1916 (Reis Ans., Ex. C, R. 60)	45,686.31
Apr. 6, 1917 amount of Mayer's share of net value of assets (C. C. A. R. 151; D. C. R. 69)	M 2,414,056.12
This figure translated into English becomes	$574,775.26

Property wrongfully seized by Alien Property Custodian in 1918

May 28, 1918, Richard Mayer's stock in Richard Mayer Co. (Mayer's Ex. A, R. 29) at book value (May 31, 1918)	$447,640.36
May 28, 1918, stock in name of Julius Laible, endorsed and certificates in possession of Richard Mayer, in Anglo-American Cotton Co. (Mayer's Ans., Ex. A, R. 31)—book value (June 1, 1918) (C. C. A. R. p. 149)	113,977.17
September 20, 1918, Richard Mayer's securities in his name and possession (Mayer's Ans., Ex. A, R. 30; Final decree, Garvan Record p. 59)	355,322.13
Total	$916,939.66

Property Returned by Alien Property Custodian
June 7, 1922

(Details Mayer's Ans., Ex. A, R. 33, 34, 36)

Sundry bonds of those taken September 20, 1918, costing $114,491.52—less one bond of the City of Cambridge for $1,000 and one bond of the General Electric Company for $1,000— and having a market value on return June 7, 1922, of about $101,000 and credited at cost	$112,491.52
Part of First Liberty Loan 3½'s taken September 20, 1918	93,000.00
Second Liberty Loan Converted 4¼'s taken September 20, 1918	50,000.00
Shares of Canadian Gasolene Corporation, Ltd., and Gasolene Corporation taken September 20, 1918, of doubtful value but credited back at cost	45,000.00
Three promissory notes taken September 20, 1918, at $30,000 in the aggregate, to which is added at return the accumulating interest at five per cent. from April 1, 1918 to June 7, 1922, making	36,275.00
Sundry small loans taken September 20, 1918 —less $100 principal paid on one	1,675.00
Check of State Street Trust Co. for recently collected income	1,862.75
Draft subsequently received from Treasurer of United States	18,429.87
500 shares stock in Anglo-American Cotton Co., having no assets and having liabilities.	0.00
2,000 shares of capital stock of Richard Mayer Co., assumed to have no liabilities and having a net worth, according to the trial balance of May 31, 1922—rectified by in-	

creasing total of cash in bank and petty cash by $1,282.39, June 8, 1922	469,338.58
Total	$828,072.72

Restatement

April 6, 1917, in Mayer's hands	$910,014.07
1918, wrongfully seized from him by Alien Property Custodian	$916,939.66
June 7, 1922, returned by Alien Property Custodian	$828,072.72

The figures in this schedule will require some rectification to provide an allowance to Mayer as liquidator for the expenses which he has incurred in defending against the partnership liability for $62,595.03 (R. 73) in the "Carolyn" case which has now been settled for $31,297.51.

As appears from the first schedule above, if the decision of the Circuit Court of Appeals is applied and after proper allowance for counsel fees and disbursements not yet determined, there is probably no surplus to be turned over by Mayer to the Alien Property Custodian.

If the Supreme Court differs from the majority of the Circuit Court of Appeals and allows Mayer for the four years during which he lost the enjoyment of the property because of the wrongful seizure of it by the Alien Property Custodian as trustee for the German partners, he will be entitled to a sum which, having regard to interest rates, may be estimated at $175,000. This will not only destroy any possibility of a surplus, but will leave Mayer with insufficient property to cover his own share by considerably more than $100,000.

1. The courts below erred in allowing nothing to Mayer for interest or loss of use of the property from the time of its wrongful seizure in 1918 to the time of its return in 1922. (Mayer assignment, R. 162)

The Alien Property Custodian wrongfully seized from the liquidating partner, Mayer, in 1918, property of the value of $916,939.66. Mayer was entitled at that time to have and retain from it as his own, $745,083.93. He demanded it back in 1918. He was wrongfully deprived of the use of that amount for four years. The final decree in *Mayer* v. *Garvan* has established this as *res adjudicata*, between the Alien Property Custodian and Mayer.

By the partnership agreement itself (Garvan Record, p. 20) and by the law, Mayer was the liquidator of the American assets on dissolution. The partnership was dissolved by the outbreak of war April 6, 1917.

If the Alien Property Custodian had taken this property, not as a public official, he would have been personally liable for damages for its detention. As he took it as a public official under the forms of law, he escaped that personal liability. But Mayer nevertheless suffered the four years' loss of the use of the property.

The Alien Property Custodian took the property as the property of the Germans and for the Germans. While it was in his possession it was, as far as Mayer was concerned, in the possession of the Germans. The Alien Property Custodian, who, for the Germans, took this property away from the American partner, is now, for the Germans, asking Mayer to account for any surplus. Under the Act of Congress directing return, part of it will go to them at once, and all, eventually. Before the American partner turns over any surplus he should be made whole for the four years in which he was deprived of the use of the property. Of course the use of the property was worth more to Mayer than it is to be expected that the Alien Property Custodian would

make out of it during the period of his custody. He took $916,939.66. He returned $828,072.72.

Measured by interest rates, the four years' loss of the use of $745,083.39 would be worth approximately $175,000.00.

The six per cent. interest rate is the proper measure of the damages for the detention.

> *Hicks, Alien Property Custodian* v. *Guinness*, Nov. 16, 1925 — 46 Sup. Ct. Rep., p. 46.
>
> *Miller, Alien Property Custodian* v. *Robertson*, 266 U. S. 243, 258.

As the claim is against this private fund and not against the United States or its officer as such, the rule of sovereign immunity from liability for interest has no bearing.

> *Miller, Alien Property Custodian* v. *Robertson* 266 U. S. 243, 257.

No satisfactory reason can be assigned why the American partner should be obliged to suffer this loss. He did nothing wrong. Immediately after the property was wrongfully taken he petitioned in 1918 for its return. The Alien Property Custodian resisted, and continued to hold the property for the German partners. He was the one, by law, to hold the share of the German partners. As far as Mayer was concerned, the German partners held their share, and much more, by this seizure.

Until Mayer has the $745,083.39 above all proper disbursements, and an additional sum of something like $175,000.00, he has received no more than he ought to have and there is no surplus which he ought to pay over.

During this same period from April 6, 1917, the German partners had not only their own share but what had been Mayer's share of the German assets. They have had those assets, with their earning capacity, ever since April 6, 1917. For those earnings they are not called upon to account to Mayer. The German partners kept all the benefits of this

use. On the other hand, by the decree below Mayer gets nothing to recompense him for the loss of the use of his share. The Alien Property Law ought not to impose this loss on a loyal American citizen not required for the protection of the public interests, and going to benefit only the German partners who have had the actual use of the German share during all the time.

In *Hugh Stevenson & Sons, Ltd.* v. *Aktien-Gesellschaft*, 1918 Appeal Cases, 239; 118 L.T. N.S. 126 in the House of Lords; 115 L.T. N.S. 594 (1917) 1 K.B. 842 in the Court of Appeals; 114 L.T. 180 (1916); approved by this Court Nov. 16, 1925 in *Hicks, Alien Property Custodian* v. *Guinness*, 46 Sup. Ct. Rep., p. 47, the House of Lords and the Court of Appeals were of the opinion that to let even the loyal partner take the property without payment for its use in the interval would be a confiscation of the value of that use, namely, a confiscation of the best measure of that value, interest during the interval. If the loyal partner ought to pay interest to the enemy partner, *a fortiori* ought the loyal partner to receive interest when the enemy partner by his representative, the Alien Property Custodian, has deprived him of that use.

Clay v. *Field*, 138 U. S. 464, 473.
Hutchins v. *Page*, 204 Mass. 284.

This is not a claim for interest on balances properly in the hands of a liquidating partner. It is the claim that Mayer wrongfully deprived of the property in 1918, should be left as well off as if that wrong had not been done him by the German partners through their representative, the Alien Property Custodian.

It could be conceded without affecting this case, that interest as such does not run upon a debt due from an enemy, presented to the Alien Property Custodian for payment out of the enemy's funds (*Brown* v. *Hiatts*, 15 Wall. 177; *Hoare* v. *Allen*, 2 Dallas 102; *Agency of Canadian Car and Foundry Co.* v. *American Can Co.*, 258 Fed. 363 (C. C. A. 2d); *Stand-*

ard Silver Lead Mining Co. v. *Garvan*, No. 3345 D. C., E. D. Washington; *United States* v. *Bayard*, 127 U. S. 251; *In re Krupp*, (1916) 2 Chancery 194 — 114 L.T. N.S. 1026. Such a holding rests on the principle that inasmuch as the enemy cannot lawfully pay the debt during the war, he is not liable for interest.

This rule does not apply to damages by way of interest on money or property withheld after demand which should have been complied with, and lawfully could be complied with.

Hicks, Alien Property Custodian v. *Guinness*, 46 Sup. Ct. R. 47.

Miller, Alien Property Custodian v. *Robertson*, 266 U. S. 243, 258.

Miller v. *Humphrey*, 7 Fed. (2) 330 (C. C. A. 9th Cert. Nov. 1925).

Mayer demanded return in 1918. Thereafter he should not be deprived of the use of his share, wrongfully, by the Alien Property Custodian and yet be obliged to account to the Alien Property Custodian as for a surplus for the benefit of the German partners, when Mayer is to come out of the transaction without even his whole principal intact and the enemy partners are to keep without accountability all that has resulted from the use of the property in Germany since April 6, 1917. Neither law nor equity contains any principle which requires the giving of such an advantage to enemy partners at the expense of such hardship to the loyal American partner.

2. The courts below rightly failed to provide in the decree for allowance to German employees. (Reis assignment 25, R. 162.)

The defendant German partners and not the plaintiff Alien Property Custodian, assign error in this particular (R. 162). As this is a suit of the Alien Property Custodian alone against Mayer, it would seem that Mayer should not be called upon to meet an assignment of error which the Custodian does not make. The German partners were joined merely to get into the case their accounting of the German assets for its bearing on Mayer's accountability if any to the Alien Property Custodian. The plaintiff represents the entire rights against Mayer, to accountability. The accidental defendants should not be heard as plaintiffs in the same interest.

The four employees — Ely and others — appear to have been profit-sharers under their contracts. They were not entitled to any interest in the assets themselves. Their percentages were not based on the assets. They were based on the profits. Reis has testified that they have been paid their percentages as to the profits made in Germany. There is nothing in the record to show whether any profits were made in America, or, if so, the amount of these. They were comparatively small. In the great export business the profits went to the books in Germany and not in America (R. 91). The assets remaining in America were very largely what remained of the capital remittances from Germany, and not profits (R. 89, 90). The impossibility of determining that there was anything due to these profit-sharing employees is sufficient ground for refusing to make any allowance on account of it.

But, even if the profits could be determined so that the amount of percentages of Ely and others could be reckoned, still they should not affect the American assets. Ely and others are employees in Germany. They have presented

no claim. These German employees should not be paid in America out of the American assets. Laible, whose percentage was based on both the American and the German profits, was an employee in America and he was paid wholly out of the American assets. Ely and others are payable, if at all, out of the German assets. They have no interest in the assets as such.

Ely and others were alien enemies. For the debts due them they could not maintain an application for payment to the Alien Property Custodian because they were enemies and so not within Section 9 of the Trading with the Enemy Act.

If these debts of the partnership are to be paid in America, then, under the terms of Section 8 (a) of the Trading with the Enemy Act and under the terms of the decree in the Garvan Case, Mayer is to pay them and he should, therefore, retain more rather than less money before there is any surplus to be paid over to the Alien Property Custodian. The only thing which Mayer is to turn over to the Alien Property Custodian is any surplus that there may be after the payment of the debts and the satisfaction of his lien. No part of the sum turned over by Mayer to the Alien Property Custodian would go to Ely and others. What if anything is due them, is not surplus.

There was no error in the decrees below in this respect.

3. The Court of Appeals rightly held the $4000 paid for a bond, to be an expense of liquidation. (A. P. C. assignment 7, R. 157; Reis assignment 21, R. 161)

When the Alien Property Custodian wrongfully seized the assets from Mayer in 1918, Mayer was entitled to the possession of them as the liquidator for the partnership which was terminated April 6, 1917. Any expense properly incurred in regaining possession was an expense of liquidation. It is a mere accident that the wrongful dispossessor was the Alien Property Custodian. He might have been a private *tort feasor*. The expense was the same.

The decree after mandate in *Mayer* v. *Garvan* for the return of the property to Mayer, was final. It was based on the fact that Mayer, as the American liquidating partner, was entitled to possession of all the assets in America as the liquidator for the partnership. This is *res adjudicata*.

In order to persuade the Alien Property Custodian not to appeal from that decree to the Supreme Court, and so in order to get performance of the decree by the Alien Property Custodian, the liquidator — Mayer — was obliged to spend $4,000 as a premium on a surety bond which the Custodian exacted before performing the decree (R. 80). Mayer got no benefit from the payment. The only good which it did was to assure the Alien Property Custodian that when the litigation was over, any surplus which might be due to the Alien Property Custodian as a representative of the other partners, would be forthcoming. The bond was wholly for the protection of this surplus, and not for the protection of Mayer's share. The expense should be borne by this surplus, and not wholly by Mayer. It was a wise expenditure. It was much less than the cost of defending against a futile appeal to the Supreme Court. It was, accordingly, a necessary and proper expense of liquidation.

4. The Court of Appeals rightly held that the cost of regaining possession of the property was an expense of liquidation. (A. P. C. assignment 11, R. 158; Reis assignment 24, R. 161)

The argument for this is largely a repetition of what has just been said under heading 3. The Alien Property Custodian wrongfully took the property from the liquidator — Mayer. It was his duty as liquidator to get it back. *Mayer* v. *Garvan*, 278 Fed. 27, 35, settled that he had been entitled to possession of the property as liquidator from April 6, 1917. He could not get the property back without going to expense. He first made application to the Alien Property Custodian for the return of the property. This did not prevail. He was obliged to bring suit. It was successful. It restored the assets of the dissolved firm to the proper custody. It would seem that no one could doubt that if the wrongful taker of the property were a thief or private adverse claimant, the expenses of getting the property back would be an expense of liquidation properly chargeable against the fund recovered and not to be paid out of the personal funds of the liquidator. It is no different where the wrongful seizure is made by a public official under claim of right. The wrongful seizure was antagonistic, not only to Mayer, individually, but also to Mayer as the liquidator. The counsel fees and disbursements in the applications for a return of the property and in the suit, were proper, necessary, and unavoidable expenses of liquidation. Mayer should not bear the burden alone.

5. The Courts below rightly held that reserves were not a debt. (A. P. C. assignment 12, R. 158; Reis assignment 20, R. 161)

Mayer's share was his part of the surplus of the gross assets over the gross liabilities. This was not affected by the fact that a part of this surplus was carried in capital accounts, in reserve accounts, or in surplus accounts. The gross assets in Germany were land and buildings, plant and machinery, furniture and fittings, tools and utensils, merchandise, accounts receivable, investments, cash, and bank balances. The uncontradicted testimony is that the land and buildings, and plant and machinery, were worth April 6, 1917 more than the book value (R. 85, 87). The undisputed testimony is that the other assets were worth their book value and produced their book value (R. 82, 85, 91). It follows that the gross assets were worth, book value, M15,802,922.33 (Ex. A, R. 49–53, 87), plus land and buildings excess M254,370.34, and machinery excess M93,165 — a total of M16,150,457.67.

The gross assets yielded more than this sum.

To pay all the liabilities it took M3,356,939.61 (R. 85, 86; Garvan Record, 146). This left M12,793,518.06 as the net assets.

Reis says that Mayer should have no part in 950,814.31 because this sum was legitimate reserves. He admits, however, that they existed April 6, 1917 and then belonged to all the partners (R. 88).

It is immaterial whether the reserves were fairly and honestly set up as reserves instead of surplus. The fact remains, that they were not liabilities. They were owed to no one. They were just as much net assets of the firm as was the book surplus (R.88).

Reis says that they were more than exhausted, but this means that they were exhausted in the course of business after April 6, 1917. They were exhausted in the new busi-

ness wholly,— not in the business of the old firm. If they had not been taken up in the new ventures, the German partners would have been obliged to meet an equal part of the new ventures by sustaining greater losses or by sustaining lessened profits.

It is submitted that it is unanswerable that on April 6, 1917 the book value of the gross assets was M16,150,457.67, and the gross actual liabilities 3,356,939.61, and that therefore the net assets were 12,793,518.06, regardless of whether those assets were carried in the form of capital account, surplus account, or reserve account.

Book figures are valuable, not as a finality but as evidence of actual values. If it is shown that the gross assets had the actual value stated, and that the liabilities were no more than the amount stated, the balance must be net assets. That is the sum from which the amount of Mayer's percentage is to be determined. There is no reason why the German partners should keep all the reserves for themselves, or to expend in the new business after dissolution.

Strauss recognized that both the good-will and the reserves were items to be credited in determining Mayer's share (Garvan Record, 101). Mayer's share, computed from the German assets, was his percentage of the real value of the gross assets less the real liabilities. The reserves were not liabilities. They were not a debt. The Courts below properly so decided (R. 155, 69).

6. The Court of Appeals rightly held that Mayer was not obliged to account to the Alien Property Custodian for sums paid after April 6, 1917 by his former German partners for German taxes on Mayer, individually. (A. P. C. assignment 8, R. 157; Reis assignments 17, 22, R. 161)

The decision of the Circuit Court of Appeals was right, for at least four reasons:

(1) This payment was not chargeable to Mayer. When this payment was made during the war, after April 6, 1917, it appears that Mayer had no property in Germany. The German former partners had taken over his share for the new business which they had elected to continue. This has been adjudged. Thereby they rendered themselves accountable to Mayer for the value of his share. This accountability was not a debt due to Mayer, because he already had in his hands in America as much as this. The tax was a tax of the German government against Mayer, who was a citizen of a country at war with Germany. The payment was made by these enemy partners voluntarily to the German government without any authority from Mayer. The amount was M266,434.40. The payment was on December 10, 1917, some eight months after the outbreak of the war and the appropriation of Mayer's interest by the German partners (R. 154). The payment was not made for the protection of any interest of Mayer's, or for his benefit. The war had terminated any authority. The German partners did not act as trustees for the protection of his interest, for that interest they had appropriated to themselves (R. 154). Not only did he not authorize his former partners to pay any tax to Germany after the outbreak of the war, but no such authorization could be implied and payment by Mayer would have been a disloyal act. The tax was not on the partnership. It was on Mayer, personally. There is nothing to show that it was rightfully assessed. Mayer had a right to contest it. The German partners are seeking to set up a

credit on account of the payment. They have not shown that Mayer was liable. They have shown only that they paid the money without Mayer's authority. He had the right to abstain from paying taxes to the enemy during the war. It is clear that one person cannot make another his debtor by paying, voluntarily, a tax on the latter without the latter's request or consent.

Homestead Co. v. *Valley R. R.*, 17 Wall. 153, 166.
Litchfield v. *County of Webster*, 101 U. S. 773, 778, dictum.
Sherman v. *Savery*, 2 Fed. 505, 516 (D. C. Ia.), dictum.
Irvine v. *Angus*, 93 Fed. 629, 633 (C. C. A. 9th), dictum, reversing 84 Fed. 127, 130 (C. C. Cal.).
Bender v. *King*, 111 Fed. 60, 67 (C. C. Mont.).
Foote v. *Cotting*, 195 Mass. 55, 63, dictum.
Keener Quasi Con., p. 388.

(2) Even legitimate debts of a partner paid by the other partners without an agreement that they shall be a part of the partnership accounting, are not to be taken into account in determining the partner's share in the partnership assets.

Goldthwait v. *Day*, 149 Mass. 185, 188.
Shearman v. *Cameron*, 76 N. J. Eq. 426 — 74 Atl. 979.
Caldwell v. *Leiber*, 7 Paige 483, 507.
Reid v. *McQuesten*, 61 N. H. 421.
O'Lone v. *O'Lone*, 2 Grant Chancery, Upper Canada, 125.
Looney v. *Gillenwaters*, 11 Heiskell (Tenn.) 133, 136.
Payne v. *Martin*, 39 Colo. 265 — 89 Pac. 46.
Smith v. *Newhouse* (Missouri), 199 S. W. 938, 942.
Bishop v. *Pendley*, 138 Ga. 738 — 76 S. E. 63.
Nims v. *Nims*, 23 Fla. 69.

(3) The subsequent payment of these personal taxes did not diminish the share which, on April 6, 1917, Mayer had in the partnership assets.

(4) The Alien Property Custodian's interest in the American assets could not grow larger after April 6, 1917 because of disbursements, not for partnership debts, made in Germany by the enemy partners after April 6, 1917.

7. The Court of Appeals rightly held that Mayer was not obliged to account to the Alien Property Custodian for sums paid without his continued authority after April 6, 1917 by his former German partners to his relatives. (A. P. C. assignment 9, R. 157; Reis assignments 17, 23, R. 161)

The Circuit Court of Appeals was right, for at least four reasons:

(1) There is no basis for charging these payments against Mayer. Approximately 50,000 marks were paid after April 6, 1917, and mainly in the years 1918 to 1921 inclusive (R. 64, 87.) Apparently they were friendly — and certainly voluntary — payments. In like way, Mayer has paid to Stadeker (a relative in America of Edwin Reis') $7,050 (R. 94) for which he was given no credit in the accounting. Any authority to the German former partners to make these donations to Mayer's relatives on Mayer's account, was terminated by the outbreak of war. The German enemies could not, by making the donations thereafter, increase their interest in the American assets or diminish Mayer's interest in those assets from the amount thereof on April 6, 1917.

(2) Even if these donations had been legally chargeable by the enemy partners to Mayer, while failing to meet similar payments made by Mayer to Edwin Reis' relatives, they would form no part of partnership accounting nor affect the surplus if any which Mayer should pay to the Alien Property Custodian.

Goldthwait v. *Day*, 149 Mass. 185, 188.
Shearman v. *Cameron*, 76 N. J. Eq. 426 — 74 Atl. 979.
Caldwell v. *Leiber*, 7 Paige 483, 507.
Reid v. *McQuesten*, 61 N. H. 421.
O'Lone v. *O'Lone*, 2 Grant Chancery, Upper Canada, 125.
Looney v. *Gillenwaters*, 11 Heiskell (Tenn.) 133, 136.

Payne v. *Martin*, 39 Colo. 265 — 89 Pac. 46.
Smith v. *Newhouse* (Missouri), 199 S. W. 938, 942.
Bishop v. *Pendley*, 138 Ga. 738 — 76 S. E. 63.
Nims v. *Nims*, 23 Fla. 69.

(3) The subsequent making of these donations did not diminish the share which on April 6, 1917 Mayer had in the partnership assets.

(4) The Alien Property Custodian's interest in the American assets could not grow larger after April 6, 1917 because of disbursements, not for partnership debts, made in Germany by the enemy partners after April 6, 1917.

8. The Courts below rightly took April 6, 1917 for accountability. (A. P. C. assignments 3-5, 10, 13-20, R. 157, 158; Reis assignments 5-19, R. 160, 161)

a. The declaration of war dissolved the partnership *ipso facto* April 6, 1917, regardless of agreements, intentions, or wishes of the parties (*Mayer* v. *Garvan*, 270 Fed. 229; 228 Fed. 27). There was only one partnership in this case, no matter how many seats it had. On the outbreak of war that partnership was composed of a citizen of the United States and of three enemies of the United States. It is the settled law, and it is also *res adjudicata* between the Alien Property Custodian and Mayer, " that the said partnership of Reis & Co. was dissolved by operation of law upon the outbreak of war between the United States and the Imperial German Government on April 6, 1917." That is the only partnership involved. Whatever the law of Germany may be, it is not legally possible for a citizen of the United States to be in a partnership in the United States or in Germany, or anywhere else, with enemies. If a partnership had continued to exist, the business done by the partners would be as agents for all the partners, loyals and enemies alike. An agent cannot lawfully conduct a going business for enemies, even within loyal lines. *Montgomery* v. *United States*, 15 Wall. 395. On the dissolution April 6, 1917, a lien in Mayer's favor attached to all the American assets to assure him of the payment of all the partnership debts and to assure him that he would receive all that he ought to receive from the enemy partners on account of the German assets. By the decree in the Garvan case, it is *res adjudicata* " that the complainant on the dissolution of the partnership by the outbreak of the war had a lien on the American assets and their proceeds for what was due him from the partnership on an accounting of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting."

There is no date to which this **was** can apply except April 6, 1917. What "was" then due Mayer was to be determined by offsetting the amount of the net assets of the partnership in his hands against the amount of the net assets in the enemy partner's hands. These were fixed facts, even if each, because of lack of means of communication, was ignorant of the facts known to the other. The accounting to be made when cessation of hostilities rendered it possible would disclose the amount of the relative obligations of the one partner to the other, but it would not create the obligations, or the amount of them. The accounting **defines** the liability. It does **not create** it.

b. This is a suit to compel Mayer to pay over the surplus. It is not a suit to dissolve a partnership or to compel an accounting for operations of a partnership existing after April 6, 1917. In the Garvan case it was decreed " that the plaintiff [Mayer] shall hold possession of the money and property so delivered to him under the terms and provisions of Section 8 (a) of the Trading with the Enemy Act and with the rights and duties in respect thereof which are set forth in paragraph 10 of this decree." Under Section 8 (a), Mayer's right, as a holder of this lien, was " to continue to hold said property " and " to dispose of the property in accordance with law," and his duty was " that if on any such disposition of property a surplus shall remain after the satisfaction of the lien or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order." In short, Mayer's duty is to pay over any surplus **after** the property has been disposed of and **after** his lien has received **satisfaction.** The bill of complaint does not purport to be one to dissolve a partnership. It does not ask that the German partners be required to do anything except to disclose the value of the assets in their control. The dissolution does not take place at the date of the de-

cree. The bill does not ask that anything be turned over to the Alien Property Custodian except the surplus which shall remain **after the satisfaction** of the amount due to Mayer.

c. Until Mayer's lien has been satisfied he is under no obligation to turn over anything to the Alien Property Custodian. Unless, therefore, the German defendants have so treated the German assets that Mayer's interest in them has ceased, he has not received satisfaction of his lien for that interest and the time for ascertainment of the surplus has not arrived and Mayer is under no obligation at present to turn anything over to the Alien Property Custodian. If, on the other hand, Mayer's interest in the German assets has ceased, and he has acquired a right to charge the German partners with the 1917 price of that interest and to satisfy his lien for that amount out of the assets in his hands, then, if there is a surplus after that satisfaction, he is under obligation to turn it over to the Alien Property Custodian. There is no basis for a decree in this case to order any assets sold. There is no occasion to value any assets unless the person charged with them is to be treated as having become the purchaser of them from his former partner or partners at that value.

d. The Reises and Strauss should be treated as purchasers April 6, 1917. It seems not to be disputed that they did not liquidate. On the contrary, they continued to use the German assets in a going business after the dissolution, April 6, 1917. The Court has so found (R. 149). Reis testified that they went right on. The books were not closed as of April 6, 1917. The old assets and the new were commingled indistinguishably. Monies received on old account and on new were commingled in the same bank accounts. Old merchandise and new merchandise were kept together. The factories were used without interruption for a single continuing business, and this has gone on for

six years and was still going on at the time of the trial and very likely is still going on. No assets were ever set aside as funds received in liquidation, either for all the late partners or for Mayer (R. 88, 89). The business has continued without interruption, to date, and the assets have continued to be and are now used " in the ordinary course of a going business " (R. 88, 89). The Reises and Strauss and later Leiser conducted this business after dissolution April 6, 1917, for their own account, as is shown by the action of the German defendants to the very close of the trial. They have purported to account, but they have made no account of the profits of the going business, and they have made no showing as to the assets now in that business. They have assumed that none of the assets except the Friedrichsfeld land, buildings, and machinery are assets to be specifically accounted for. If the business was conducted in any respect for account of Mayer, it was the whole business. There was not a new and an old business going on at the same time. There was one business. That was the business in which the assets were used. Clearly, the German defendants recognized that they were not conducting the business for Mayer's account, and were conducting it for their own account. At the beginning of 1920 they took in a new partner, Leiser (R. 88), without any communication with Mayer and without any consent from him. The Herzberg plant was used for two years and then sold. (R 88). The Franzensthal plant was used for three years and then sold. This was done without the agreement or consent of Mayer. Both these sales were after the Armistice, and after Strauss was in communication with Mayer (Exs. D, E, F—R. 95). Counsel for the German defendants informed the Court that Strauss was in Boston in condition to testify during the trial in March, 1923. His only testimony is that introduced in the Garvan record, page 96: " We did business under this partnership agreement until it ceased in 1917, after which time the firm consisted of Mr. Edwin Reis, Mr.

Ludwig Reis and myself until in January, 1918, Mr. Reis died. Then the firm consisted only of Mr. Edwin Reis and myself, and in 1919 Mr. Alex Leiser who had been bonus sharing in previous years was made a partner. We really had no regular connection with our Boston office or with Richard Mayer after the importations had practically stopped — the only proper information we got was when Mr. Laible came to Europe at the end of 1915 and in 1916." (Garvan Record, p. 97.) "During Mr. Laible's visit in 1916 my European partners and I talked with him about Mr. Mayer's getting out of the firm. There had been a number of differences of opinion between Ludwig Reis and Mr. Mayer, the differences beginning shortly after Mr. Mayer had become a partner" (Garvan Record, p. 97)." Mr. Laible reported upon Mr. Mayer being very angry and being fed up with the way Ludwig Reis had been going on, and Ludwig replied to him that he did not care about Mayer's being angry and would not care if Mayer would go where he came from. Mr Laible reported that Mr. Mayer said that he wanted to get out of the partnership as he was tired of the way Ludwig Reis was carrying on. At the conversation there were present Ludwig Reis, Edwin Reis, Laible and myself. I do not think that any special instructions were given to Mr. Laible to carry back to Mr. Mayer relating to that matter. Nothing definite was arranged excepting that he was given to understand that if Mr. Mayer really did want to get out there would be no particular objection to it. Laible had no specific order from Mr. Mayer or from us" (Garvan Record p. 98). "After April 6, 1917, the date of the beginning of the war with America, Edwin Reis, Ludwig Reis and I treated the German assets of the firm entirely as our own. In 1919 we sold the Baumwollbleicherei, Herzberg, to the Borvisko Company of Berlin and America, and in May, 1920, we sold Algersdorf to a Cschechoslovakian concern. The liquid assets changed continually. The assets of both companies which I mentioned included real

estate" (Garvan Record, p. 98). "We also sold land at Friedrichsfeld to various people, about four or five" (Garvan Record, p. 99). "We knew the European assets to be about Marks 11,500,000 at the end of 1916. Book value only. That last figure at the rate of 4.20, which was the rate laid down in the partnership agreement, amounts to at least $3,000,000 if you considered the good will and reserves of the business. That would mean that the total assets, American and European together, were $3,650,000, and of this total Mr. Mayer was entitled to 20% under the partnership agreement, or something like $700,000" (Garvan Record, p. 101). "We ascertained the share of Mr. Mayer in the European assets per end of 1917 and divided those among the partners Edwin Reis, Ludwig Reis and myself" (Garvan Record, p. 109). Price, Waterhouse & Company examined the books in August, 1920. They complained of the fact that they were not shown the books prior to December 31, 1916, to enable them to verify the balances of that date. The balances as they found them are in accordance with the balances as of that date put in evidence at the trial in March, 1923 (Record, p. 114). Edwin Reis has produced a private ledger which he says was not shown Price, Waterhouse & Company, on which there are certain entries under the name of Richard Mayer. Those made after 1916 were not made by Reis. Price, Waterhouse & Company say (Garvan Record, p. 123): "We have closely examined the capital accounts of the partners of the firm. Particulars of these are contained in two small books which we are informed are kept by Mr. Edwin Reis personally. The first book contains only the capital accounts relating to the Friedrichsfeld Factory, whilst the second book contains the Kapok, Herzberg, Franzensthal Factory and Swiss Bank and Investments capital accounts. All of these accounts with the exception of the Herzberg and Swiss Bank and Investment accounts, are kept on the usual double entry system. We refer later in this report to the method adopted in

respect of these. In order that we should be able to satisfy ourselves as to the genuineness of these books we should, in our opinion, be allowed access to the general books of account relating to the periods prior and subsequent to the year 1917." It will be noted that it was the general books of account and not these private capital accounts which Price, Waterhouse & Company were complaining of not seeing, and that the description of the books which they did see accords with the books produced at the trial by Reis. Price, Waterhouse & Company describe the partners' capital accounts which they saw (Garvan Record, p. 124) and say that: " Richard Mayer's account has not been credited with any share of the profits for the year 1917, the whole of this, amounting to M.604,332.54, having been divided amongst the remaining partners and the procuration holders in the following manner." They follow this by detail figures to show that it went to the procuration holders and to the account of Edwin Reis, Ludwig Reis and Karl B. Strauss. They say that the whole of Richard Mayer's account, capital and profits, was transferred on July 1, 1917, on this Friedrichsfeld capital account to Edwin Reis, Ludwig Reis and Karl B. Strauss (Garvan Record, p. 125). Referring to the private ledger, they say that the balance standing to Richard Mayer's credit July 1, 1917, was divided among the other three partners (Garvan Record, p. 128). As to the Herzberg capital accounts, they say that the balance of Richard Mayer's capital account at July 1, 1917, was divided among the other three partners (Garvan Record, p. 130). As to the Franzensthal capital accounts, they say that as shown in the private ledger, Richard Mayer's capital account was divided among the other three partners July 1, 1917 (Garvan Record, p. 131). As to the Swiss Bank Account and Investment Accounts, they say that on the private ledger these stood to the credit of the four partners December 31, 1916, and that according to the private ledger these stood on December 31, 1917 to the credit of

the three partners only, and that Richard Mayer's share had been carried to the accounts of the other partners on July 1, 1917 (Garvan Record, p. 132). They saw not only the partners' private accounts, but also the journalization of the transfers from Mayer to the other three partners (Garvan Record, p. 140). It thus appears that Price, Waterhouse not only do not complain of not seeing the private ledgers but that they actually did see them and saw the transfers thereon of Richard Mayer's capital and profit credits to the other partners. This is an emphatic declaration that the German partners were conducting the business for their own account. They were undoubtedly aware that Richard Mayer had in his own hands in the United States, sufficient to cover his share both in Germany and in the United States. These entries on the books which Price, Waterhouse & Company saw have not been contradicted in any way. In view of the fact that Mayer had in his own hands enough to cover his share, these entries were the natural ones to make to appropriate to the three German partners Mayer's share in their hands to cover what was due from Mayer on account of the American assets. Unless it be the bald assertion by Reis of a state of mind, six years later, there is nothing in conflict with this overwhelming evidence that the business in Germany after April 6, 1917, was for the account of the German defendants. There can be no question but that the finding of fact below was warranted, that " the German partners thereafter continued the German business as a going business and have so continued it on their own account, treating the German assets as their own " (R. 149).

e. In addition it is *res adjudicata* that the Reises and Strauss conducted this business for their own account after April 6, 1917. The entire record in Mayer against the Alien Property Custodian — No. 925 — was before the Court by agreement of all parties, and in accordance with this agreement the Court took judicial notice of it (Record, p. 80). Mayer alleged in the 32d paragraph of the bill of complaint

in that case that on April 6, 1917 the European partners had taken to themselves all of the European assets of Reis & Co. and terminated any interest of Mayer therein (Garvan Record, p. 7). The Alien Property Custodian expressly denied these averments (Garvan Record, p. 41). Strauss testified that: "After April 6, 1917, the date of the beginning of the war with America, Edwin Reis, Ludwig Reis and I treated the German assets of the firm entirely as our own" (Garvan Record, p. 98). "We ascertained the share of Mr. Mayer in the European assets per end of 1917, and divided those among the partners Edwin Reis, Ludwig Reis and myself" (Garvan Record, p. 109). The report of Price, Waterhouse & Company, the accountants appointed by and for the Court, to investigate the books, was to the same effect (Garvan Record, pp. 124-140). On the issue thus made by the pleadings, the Court found that: "The partnership had its chief place of business in Germany, but it also had established houses in England and the United States (Garvan Record, p. 177). When the war broke out between the United States and Germany the European partners took over all the European assets and treated them as their own and themselves as the only partners remaining in Reis & Co." (Garvan Record, p. 179). On the same issue the Circuit Court of Appeals found that: "War was declared by the United States against Germany April 6, 1917, and after that date the German partners treated the German assets as their own and conducted the business in Europe as if Richard Mayer had no interest in it." On the state of facts so established, the Court decreed: "That the complainant [Mayer] on the dissolution of the partnership by the outbreak of the war had a lien on the American assets and their proceeds for what was due him from the partnership on an accounting of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting." What was due the complainant, as provided in this decree,

was based on the adjudged fact that the German partners had taken over the German assets as their own. That is *res adjudicata.*

Oklahoma v. *Texas,* 256 U. S. 70, 85.
Myers v. *International Trust Co.,* 263 U. S. 64.
United States v. *Moser,* 266 U. S. 236.

f. Mayer did not consent, or contract with his enemy former partners, that they might conduct a going business in Germany for his account. He had no communication with Reis after April 6, 1917 (R. 88). He had no communication with Strauss after April 6, 1917, before 1919. He had no communication with his brother, Karl Mayer, after April 6, 1917, before 1919. On April 7, 1919 Mayer sued in the District Court of the United States for the District of Massachusetts, alleging that the partnership had been dissolved April 6, 1917 and that he claimed all the American assets as his own and that the German partners had taken all the German assets as their own and had terminated his interest therein. The German partners had received notice of this claim (Garvan Record, p. 67). This was a most emphatic communication by Mayer to his former partners that he claimed that the German business had not been done for his account since April 6, 1917, and that he did not consent to its being done for his account. The first letter which Strauss received from Mayer was over a year later, July 7, 1920 (Garvan Record, p. 105). It does not appear that this related in any way to business affairs. Strauss' letters to Mayer, from the first one July 4, 1919, to the last one, September 22, 1921 (Exs. D to H — R. 95, 96), show that he was not hearing from Mayer in the earlier period and that he had no thought that Mayer supposed the business in Germany was being conducted in any way for Mayer's account. As late as March 9, 1920, he says: " Business in Europe is picking up slowly, especially for us not having any proper American organization to support us with offers, which is

rather a handicap." On November 4, 1920, he says, " I hope your case will take a favorable end soon, and then you will have the means available for starting a right business again." On September 22, 1921, he says, " I also would like to discuss *my own* future plans with you as I think seriously of coming to live over here. All these matters are quite as important as your darned old law suit. Dash it all, they have to give you *your* money back sooner or later anyhow." (Italics not in original.) Apparently Mayer did not write Strauss anything about the business. If there was any such letter bearing against Mayer's contention, it would have been put in evidence. At the request of the plaintiff and of the German partners, Karl Mayer's letters to his brother Richard, and letter book copies of those from Richard to Karl, were produced at the trial. It does not appear that any of them contained any indication of knowledge on Richard Mayer's part that the German business was being done on his account or that he consented thereto. Reis says that the first time that he saw any letter from Richard Mayer to Karl Mayer was one written the latter part of 1919. He does not remember that it contained anything about the business of Reis & Co. The same is true of the next letter. Reis says that he saw the second or third letter, that of February 9, 1920, and may have seen one or two before that. It is agreed that none of the letters in the copy-books from Richard Mayer to Karl Mayer have any bearing, except those which have been put in evidence. None of these show any knowledge or consent by Mayer. The letter of February 9, 1920 contained nothing of importance. The letter of March 13, 1920 states that it was the next one after February 9, 1920. Next came those of July 12, 1920, October 7, 1920, November 15, 1920, December 2, 1920, December 15, 1920, December 20, 1920, March 6, 1921. Reis said that Mayer did not say, in so many words, that he knew that the business was being conducted for his account or that he approved of Karl Mayer's signing the balance

sheets. It is evident that Richard Mayer did not approve. The letter of November 15, 1920 (Ex. B–R. 95) shows clearly that Mayer regarded the American business as his own and that he had no marks in Germany. He was sending them from America. The letter of March 6, 1921 (Ex. C–R. 95) expressly says that the partnership came to an end April 6, 1917, that Karl Mayer should not have signed the balance sheets, and tells him not to sign any more. Reis says that Mayer never wrote "I consider myself a partner still." The general substance of the letters which he saw was that Mayer "would not decide what he was going to do before his suit was over, here." Of course, Karl Mayer had no authority to give any consent to anything on Richard Mayer's behalf. The Court has so held in *Mayer* v. *Garvan*. No consent of his was consent by Richard Mayer. No knowledge of his was knowledge of Richard Mayer. A letter has been offered (Ex. 3, R. 95) dated September 28, 1922, in which, in connection with some real estate transaction, Richard Mayer sends power of attorney to his brother Karl with the usual general ratification clause. It obviously has nothing to do with anything in the case at bar. It was sent after this suit was begun, and after Richard Mayer had filed his answer therein setting up the report which he had made to the Alien Property Custodian in June, 1922, and his contention that he had not been interested in the German assets since April 6, 1917, and that they had then become the assets of the German partners. He has never recognized the existence of an interest since (R. 94). It appears convincingly that there had been no communications between the brothers for some two or three years after the war began, and until after Richard Mayer, by suit begun April 7, 1919, had set up his claim that he was entitled to all the American assets and had no interest in the German assets, and had not had since April 6, 1917. It is most improbable that pending this important litigation, involving a large part of a million dollars, he would have taken a differ-

ent position in his correspondence,— particularly when there was no need of it. He has continuously persisted in the claim up to the present time. No letters have been shown or quoted or stated in substance, that indicate any such inconsistency. The letter of March 6, 1921 (Ex. C–R. 95) shows that he was making his position very clear to his brother and that he regarded his interest in the German assets as ended April 6, 1917. The evidence clearly establishes that Mayer did not consent or contract with his enemy former partners that they might conduct a going business in Germany for his account after April 6, 1917.

g. Mayer could not before July 2, 1921 legally consent or contract with his enemy former partners that they might conduct a going business in Germany for his account. This is settled.

Mayer v. *Garvan*, 270 Fed. 229—278 Fed. 227.
Juragua Iron Co. v. *United States*, 212 U. S. 297, 306.
Hall's International Law, 6th ed., 494, 497.
Whiting's War Powers under the Constitution, 43d ed., 340, 342.
The William Bagaley, 5 Wall. 377, 408.
Planters Bank v. *St. John*, 19 Fed. Cases No. 11208.
Griswold v. *Waddington*, 15 Johns. 57, 16 Johns. 438, 447.
The Friendschaft, 4 Wheat. 105.
The San Jose Indiano, 21 Fed. Cases No. 12322.
The Cheshire, 3 Wall. 231.
The Anglo-Mexican, 118 L.T. n.s. 260, Privy Council.

h. The American assets had been liquidated in 1917. If the American assets had not been liquidated by Mayer's taking them to himself, and so becoming liable as a purchaser of them before the Alien Property Custodian took possession, they have not been liquidated yet, and he is not required to pay over any surplus until he has liquidated them and has satisfied his lien. In fact, they had been liquidated on April 6, 1917 (Mayer's Ans., Ex. A, R. 29). $170,954.56

was actual cash requiring no liquidation. $305,692.41 had been cash which Mayer had invested for himself in readily-marketable securities in his own name and for his own account — principally with Lee, Higginson & Company. The securities had declined slightly in value. He is charged with the amount which he had withdrawn to himself to invest in them. All but $35,000 par value of these securities had been sold again by Mayer before the seizure by the Alien Property Custodian in 1918. This appears by comparing the schedule of property taken by the Custodian (R. 30) with Lee, Higginson & Company's list of securities on hand April 6, 1917 (Ex. 10, R. 95). In this way, in 1917, Mayer either had in cash or had received in cash for securities sold, over $440,000. He had transferred into his own name the stock of the Richard Mayer Company — worth April 6, 1917, according to the balance sheet of that company, $429,-661 (R. 31). It should be noted that $100,000 of this balance was cash due to that company from the Export Department (R. 29), and so was already included in the cash item above stated. The only thing of moment requiring liquidation in this company was the merchandise. By the time of its seizure at the end of May, 1918, this item had been reduced from $209,691 to $42,609. (Ex. J, Ex. M–R. 96). In the light of the claim which Mayer made in 1918 to all the property seized by the Alien Property Custodian, he should be charged, in the accounting, with dollars as the value of the capital stock of the Richard Mayer Company and this asset, accordingly, should be treated as having been liquidated before May 28, 1918. If this is not so, it has not been liquidated yet. These shares of the Richard Mayer Company are still unsold, in Mayer's hands. Mayer cannot be required in this suit to turn over a surplus to the Alien Property Custodian until there has been a liquidation of the shares and a satisfaction of his lien. They should be treated as liquidated, by Mayer's purchase of them at their value when he took them to himself.

i. The continuation of the German business for six years after April 6, 1917 by the Reises and by Strauss, rendered them liable for the value of the German assets on April 6, 1917 irrespective of their intentions as to Mayer. When a partnership is dissolved, each of the partners has the right to have the partners in possession of the assets liquidate them immediately, and the consequent right, if liquidation does not take place within a reasonable time, to charge the partners in default with the value of the assets. In the case of the death of a partner, if the surviving partners continue the business of their own motion instead of liquidating within a reasonable time, they become liable for the value of the deceased's share at dissolution, notwithstanding the fact that they may have acted in good faith with the intention of conducting the business for the benefit of the late partner as well as for themselves. In *Clay* v. *Field*, 138 U. S. 464, the surviving partner continued the business in good faith in the interests of all concerned. The Court held (473) that: " The general principle of law undoubtedly is, that on the dissolution of the firm by the death of one of the partners, it is the survivor's duty to settle up the partnership affairs within a reasonable time, and pay over to the representatives of the deceased partner the amount due to them; and if he takes the responsibility of continuing the business of the firm, and using the property of the partnership, he becomes liable for losses that may occur, and it is in the option of the representatives of the deceased partner either to insist upon a division of the profits, which may be made in thus carrying on the business, or upon being paid the amount of the deceased's share in the capital, with lawful interest thereon, after deducting his indebtedness to the firm. (See Lindley on Part., Book III, chap. 10, pages 976 to 1046, 1047, 4th ed.). The application of the rule in this case would, strictly speaking, entitle the representatives of D. I. Field [the deceased partner] to call for an account of his share in the capital of the concern **at the time of his**

death, with lawful interest." (Italics not in original.) In the particular case, the rule was relaxed with respect to slaves liberated by the Emancipation Act, but it was not as to the other assets. In *Hutchins* v. *Page*, 204 Mass. 284, after dissolution the defendant partner continued to use the assets of the business. It was held that he was liable for their fair market value as a going concern at dissolution, including the value of the good-will, **notwithstanding the fact that the other partner had acquiesced.** The Court said (290): "An appropriation and use of the good-will and assets by one partner, with the acquiescence of the other, creates the same liability to account for them and their value as a wrongful appropriation of them. **It is equivalent to a purchase."** (Italics not in original). In *Moore* v. *Rawson*, 185 Mass. 264, it was held that where the defendants had continued to use the partnership assets without the consent of the plaintiff partner after dissolution, they were required to pay, in money, the amount of the value of his share of the assets, including good-will at the date of dissolution, together with a return proportionate to that amount for the use thereafter. The value should be determined on the date of dissolution, April 6, 1917 (*Parker* v. *Broadbent*, 134 Pa. St. 322; *Lindley on Part.*, 8th ed., p. 601). The representative of a deceased partner has the positive right to have the assets sold by the surviving partner (*Freeman* v. *Freeman*, 136 Mass. 260.). If this right is ignored by the partner in possession, he is to be held liable for the value of the assets at the date of dissolution. In *Hugh Stevenson & Sons, Ltd.* v. *Aktien-Gesellschaft*, 1918 Appeal Cases, 239; 118 L.T.N.S. 126 in the House of Lords; 115 L.T.N.S. 594 (1917), 1 K.B. 842 in the Court of Appeals; 114 L.T. 180 (1916) — a case apparently relied upon by counsel for the plaintiff and for the German partners, it was held that the partner in possession of partnership assets at dissolution by war, who continued to use the partnership assets instead of liquidating them, was liable not only for

the value of the other partner's share at the outbreak of war, but also for a return thereon measured by an interest rate. Here is an application of the general rule to the case of a dissolution by war. Hugh Stevenson & Sons, Ltd. brought this suit in the King's Bench against their German partner for a declaration of rights pending the war. The partnership business was in England. The plaintiff had continued the business. Atkin, J., held the partnership was dissolved by the declaration of war, and that the plaintiff had the right to carry on the business and that the enemy's right was to have the enemy's interest valued as of the date of the declaration of war and that amount paid, when payment is legally possible, without interest or profits, after dissolution. In the Court of Appeals, Swinfen Eady, L. J., held that: "In the absence of a special agreement to the contrary, the general rule is that on the dissolution of a partnership all the property belonging to the partnership shall be converted into money by a sale, even although a sale may not be necessary for the payment of debts; (Lindley on Partnership, 8th edit., p. 623)." . . . . . "Under the circumstances before mentioned, probably a claim for interest would be the real and effective claim in the present case, and not profits." Bankes, L. J., was in accord. A. T. Lawrence, J., dissented, and approved the judgment of Atkin, J. He said: "The partnership is dissolved because it is illegal. A King's court cannot foster, assist, or connive at the continuance of an illegal relation. It cannot, in my opinion, give an alien enemy profits which accrue after the relation has become illegal." The House of Lords affirmed the judgment of the Court of Appeals. Lord Chancellor Finlay said: "The German partner is, of course, not entitled to any share of the profits attributable to the skill or industry of the English partner, but some portion of the profits may be attributable to the machinery used, and the enemy partner would be entitled to some allowance in respect of his interest therein. Or, to put the matter in another way, some

allowance may be made in lieu of interest on its value in respect of the use by the English partner of the German share in the machinery." "*Hoare* v. *Allen* (2 Dall. 102) and *Brown* v. *Hiatts* (15 Wall. 177) seem to me not to be in conformity with English law." It is to be noted that this decision does not deal with the right of the absent partner [Mayer] to elect to hold the partners [Reises and Strauss] in possession liable for the value of the property at the time of dissolution if they do not sell it but on the contrary use it. It deals only with the obligation of the partners in possession to pay for the use of the property after dissolution if the absent partner does not elect to treat them as purchasers of it, because of their continued use of it and failure to liquidate. As far as the decision has any bearing on the effect of the action of the German partners in continuing the business, it is not unfavorable to Mayer. There is nothing in it inconsistent with the statement above quoted from *Clay* v. *Field* that if the surviving partner in possession takes the responsibility of continuing the business and using the property after dissolution, it is in the option of the other to insist on being paid the amount of his share at the date of dissolution, April 6, 1917, with interest.

j. This liability arose in 1917. There is no other date which can be taken. If the assets were not then liquidated by converting them into an obligation from the German partners to Mayer for credit against his obligation to the German partners, then the assets have not been liquidated yet, and Mayer has not had his interest in those assets satisfied. If he continued after 1917 to own a share in the German assets of the partnership, including the real estate and plants, he owns that share to-day,— not a money credit in accounting, but physical property,— quick assets, merchandise, machinery and real estate. By the terms of Section 8 (a) of the Trading with the Enemy Act, and by the terms of Section 10 of the decree of May 4, 1922, in *Mayer* v. *Garvan*, Mayer

is entitled to hold all the assets until his share in the German assets has been satisfied. He is not required to take his chances of getting his share out of Germany. He is not obliged to pay over any surplus to the Alien Property Custodian until that share has been actually satisfied.

9. The Courts below rightly defined in English the German word mark used in a United States Court. (A. P. C. assignments 1-3, 6, R. 157; Reis assignments 1-4, R. 159-161)

In both Courts below the plaintiff contended, and by his assignments of error apparently now contends, that in determining the value of the respective interests of the partners in the assets of the partnership, dissolved by the outbreak of war on April 6, 1917, those assets, so far as they were in Germany, should be converted into terms of the paper mark as it was valued for foreign exchange purposes on April 6, 1917, and then, at the mark estimate, should be converted into a dollar estimate at the value of the paper mark in foreign commercial exchange at the date of the decree. This astounding contention was made in 1923. When the trial opened, the foreign exchange value of the paper mark was .000048 dollars. This contrivance made Mayer's $574,775.26, as found by the Court, worth under $875. How it should be worked out now that the old mark has disappeared, cannot be predicted.

This case involves no question of foreign exchange. It involves no question of the date at which such foreign exchange shall be reckoned. Upon the outbreak of war April 6, 1917, there was no longer any rate of exchange. The internal value of the German mark in Germany on April 6, 1917, does not appear. It does not appear that the decline in the rate of foreign exchange before the war correctly expressed the decline in value in Germany (R. 151). The German partners were under no obligation to make a remittance to Mayer from Germany at any time after April 5, 1917. Mayer was under no obligation after that date to make any remittance to Germany. His obligation if any was to turn over dollars in the United States to the Alien Property Custodian of the United States. There was no occasion to find out what it would have cost in the United

States at any time to buy marks in Germany, or what it would have cost in Germany to buy dollars in the United States.

The assets in Germany had to be valued. They were not marks. They were lands, buildings, plants, machinery, furniture, fixtures, tools, utensils, merchandise, receivables, bank balances in Switzerland, and cash. It was necessary to state the value of these.

This value might have been stated in the English language, in the French language, in the Italian language, or in any other language. In fact, it was stated in a United States Court for April 6, 1917, in the word marks. This made it necessary to define the word used, when used in that Court. The word was in the dictionaries of the United States.

The Century Dictionary definition of a mark is, " the monetary unit of the German Empire equivalent to 23.8 United States cents."

The Director of the United States Mint, as required by law before and during 1917 and continuously thereafter at least as late as 1921, has determined the value of the German mark to be 23.82 cents.

This definition of 23.82 or 4.20 to a dollar, had been so continuously used between the partners that Strauss testified that it was the rate laid down in the partnership agreement (Garvan R. 101) and Mayer told Laible the same thing (R. 91) and was surprised to find otherwise when he saw the articles of co-partnership. Reis says " that was the usual way " (R. 89).

Mayer had contributed dollars (R. 80) to the capital of the firm, but in order to get it on the German books Reis translated it at 4.20.

There is no evidence that the dictionary definition, or that by the Director of the Mint, is erroneous. The finding of the Courts below, that in the United States the German

word " mark " is to be translated as .2382 cents was warranted by the evidence and not contrary to any evidence in the case (R. 73).

It is apparent from the evidence as a whole from Germany, that the values on the books in marks were the result of entries many of them made long prior to April 6, 1917. If on that date a German mark was not worth in Germany as much as 23.82 cents of the United States was worth in Germany, a thing which is entirely improbable on the evidence, then it is apparent that as the value of the mark had receded the stated value of the assets on the books was deficient, because, of course, as the value of the marks receded the value of the assets stated in terms of marks increased. Therefore, if on April 6, 1917 " mark " had come to mean something less than 23.82 cents in Germany, the German book figures should be correspondingly increased.

It is common knowledge that there is a fluctuation in foreign exchange, affected by questions of credit and by the demand and supply caused by relative volume of trade. These things have nothing to do with the intrinsic relation between the respective **internal** values of the two monetary units compared.

If the valuers in this case had been told to state these internal values in Germany April 6, 1917 in terms of the standard German coin, they would have stated no different figures. There was but one mark in Germany (R. 86). That was the expression used. There is nothing to indicate that the internal confidence in the German government on April 6, 1917 was not such that all marks were circulating at par. There is nothing to indicate that if the valuers had stated the value of the German assets in Germany on April 6, 1917 in dollars, they would not have stated for Mayer's interest, $574,775.26. On the other hand, if the value of those assets which were stated in terms of the standard German mark at 2,414,056.12, had been stated on April 6, 1917 in terms of the printing press product which the plaintiff

sought to have used in the accounting in March, 1923, those same assets would have been valued on April 6, 1917 at 9,052,710,450 marks. There is no basis for valuing a credit on April 6, 1917 by a measure which did not exist at that time. There is nothing in the case to show how much should be added to this figure for the profits which the German defendants have made out of the business since April 6, 1917 if the accounting were to be made as of the date of the decree in 1926.

It has been argued for the plaintiff that Mayer seeks to keep the solid American assets and to leave to the Germans the vanished German assets. This argument leaves out of sight, entirely, the fact that it is not shown what the German assets on the later date were. The assets in the new business after April 6, 1917 may have been turned and turned many times and into properties that have enhanced greatly in value. The German partners may stand as great gainers if they receive nothing from America.

It has been urged for the plaintiff and for the German defendants, that this case involves a conflict between what is termed the " Breach Day Rule " and the " Judgment Day Rule." It is submitted that it does not, because this is not a case to ascertain the amount of damages for a breach or to obtain a judgment in dollars on a contract to make payment in marks. The question here involved is the amount of the surplus if any for which Mayer, on April 6, 1917, was accountable in America in American dollars to be handed over in America to the Alien Property Custodian of the United States. That liability is not to be determined in marks, and then converted on a Breach Day or on a Judgment Day into dollars. The cases on this subject have been dealt with sufficiently in the Courts below (R. 152, 153, 72).

April 6, 1917 is the proper date.

Hicks, Alien Property Custodian v. *Guinness*, (Nov. 16, 1925) 46 Sup. Ct. Rep. 46.

The case is covered precisely by decision of this Court. There is no evidence in this case that the German mark was depreciated internally on April 6, 1917 (R. 151). In *Birge-Forbes Co.* v. *Heye*, 251 U. S. 317, 325—248 Fed. 636, 640 (C. C. A. 5th), the Court held that " the evidence failing to disclose any depreciation of the German mark at the time of this payment, the assumption should be that the value of the mark was at that time the normal value, and the judgment should be predicated upon this value." This was approved by the Supreme Court in the same case in 251 U. S. 317, 325.

Warranted by the evidence before them, the Courts below have found as a fact that Mayer's interest in the German assets at the dissolution of the partnership by the outbreak of war April 6, 1917, was $574,775.26. There is no ground for disturbing this finding. The Courts below rightly defined in English the German word mark used in a United States Court.

CONCLUSION

The Alien Property Custodian had no right to a dollar of the American assets. He had a right to have Mayer account, in view of all the German and American assets, April 6, 1917, for any surplus left in his hands. Mayer then had in this partnership a value of $745,083.39. He had in his own hands in the United States, enough to cover this. He was entitled to take his share of this money out at once and to put it to use to get the value of the use in addition. He was not obliged to put it away and to wait until the end of the war. If there was any surplus he was not obliged to send it to Germany. There was an Alien Property Custodian here to take it. Mayer was a citizen of the United States. He ought to come out at the end of this litigation with as much money as he would have had if the Alien Property Custodian of the United States, in the interest of his enemy partners and as trustee for them, had not wrongfully taken his property from him.

The law as to enemy trade and custody of alien property has been enacted and developed for the benefit of the Nation. For this purpose it may be necessary at times to impair the peace-time private rights of subjects of the enemy, and even of loyal citizens. The rights of loyal citizens, particularly, should be impaired as little as possible consistently with the welfare of the Nation. Such citizens as partners of enemy subjects should have their rights preserved. If the Nation itself, through its Alien Property Custodian, steps in, the necessary encroachment ought to come on the interests of the enemy subjects before those of the loyal citizens are touched.

Mayer — loyal, and free of wrong — ought to come out whole.

Respectfully submitted,

EDWARD F. McCLENNEN,

For the defendant Richard Mayer.

March, 1926.

TABLE OF CASES

Page

Agency of Canadian Car & Foundry Co. *v.* American Can Co., 258 Fed. 363 (C. C. A. 2nd) 20

Bender *v.* King, 111 Fed. 60, 67 (C. C. Mont.) 29

Birge-Forbes Co. *v.* Heye, 251 U. S. 317, 325 — 248 Fed. 636, 640 56

Bishop *v.* Pendley, 138 Ga. 738 — 76 S. C. 63 ..... 29, 32

Brown *v.* Hiatts, 15 Wall. 177 ..... 20, 50

Caldwell *v.* Leiber, 7 Paige 483, 507 ..... 29, 31

Clay *v.* Field, 138 U. S. 464 ..... 20, 47, 50

Foote *v.* Cotting, 195 Mass. 55, 63, dictum 29

Freeman *v.* Freeman, 136 Mass. 260 48

Goldthwait *v.* Day, 149 Mass. 185, 188 ..... 29, 31

Griswold *v.* Waddington, 15 Johns. 57 — 16 Johns. 438 at 447 45

Hall's International Law, 6th ed., 494, 497 45

Hicks, A. P. C. *v.* Guinness, Nov. 16, 1925 — 46 Sup. Ct. Rep., p. 46 ..... 19, 20, 21, 55

Hoare *v.* Allen, 2 Dall. 102 ..... 20, 50

Homestead Co. *v.* Valley R. R., 17 Wall. 153, 166 29

Hutchins *v.* Page, 204 Mass. 284 ..... 20, 48

In re Krupp, [1916] 2 Chancery 194 — 114 L.T.N.S. 1026 21

Irvine *v.* Angus, 93 Fed. 629, 633 (C. C. A. 9th), dictum Reversing 84 Fed. 127, 130 (C. C. Cal.) 29

Juragua Iron Co. *v.* United States, 212 U. S. 297, 306 . 45

Keener Quasi Con., p. 388 29

Lindley on Partnership, 8th ed., p. 601, 623 48

Litchfield *v.* County of Webster, 101 U. S. 773, 778, dictum 29

Looney *v.* Gillenwaters, 11 Heiskell (Tenn.) 133, 136. 29, 31

Mayer *v.* Garvan, 270 Fed. 229 (Garvan Record, p. 177) Mayer *v.* Garvan, 278 Fed. 27. Cases cited therein, and in brief for Mayer in that case in C. C. A., pp. 15 to 19 ..... 9, 18, 24, 25, 33, 45, 50

TABLE OF CASES—*Continued*

Page

Miller *v.* Humphrey, 7 Fed. (2) 330 (C. C. A. 9th Cert. Nov. 1925) 21
Miller, A. P. C. *v.* Robertson, 266 U. S. 243, 258 ... 19, 21
Montgomery *v.* United States, 15 Wall. 395 33
Moore *v.* Rawson, 185 Mass. 264 48
Myers *v.* International Trust Co., 263 U. S. 64 42
Nims *v.* Nims, 23 Fla. 69 ..... 29, 32
Oklahoma *v.* Texas, 256 U. S. 70, 85 42
O'Lone *v.* O'Lone, 2 Grant Chancery, Upper Canada, 125 ..... 29, 31
Parker *v.* Broadbent, 134 Pa. St. 322 48
Payne *v.* Martin, 39 Colo. 265 — 89 Pac. 46 ..... 29, 32
Planters Bank *v.* St. John, 19 Fed. Cases No. 11208 ... 45
Reid *v.* McQuesten, 61 N. H. 421 ..... 29, 31
Shearman *v.* Cameron, 76 N. J. Eq. 426 — 74 Atl. 979 29, 31
Sherman *v.* Savery, 2 Fed. 505, 516 (D. C. Iowa), dictum 29
Smith *v.* Newhouse, (Mo.) 199 S. W. 938, 942 ..... 29, 32
Standard Silver Lead Mining Co. *v.* Garvan, No. 3345 D. C. E. D. Washington 20
Stevenson (Hugh), & Sons, Ltd., *v.* Aktien-Gesellschaft, 1918 Appeal Cases, 239; 118 L.T.N.S. 126 in the House of Lords; 115 L.T.N.S. 594, [1917] 1 K. B. 842 in the Court of Appeals; 114 L. T. 180 (1916) 20, 48
The Anglo-Mexican, 118 L.T.N.S. 260, Privy Council 45
The Cheshire, 3 Wall. 231 45
The Friendschaft, 4 Wheat. 105 45
The San Jose Indiano, 21 Fed. Cases No. 12322 45
The William Bagaley, 5 Wall. 377, 408 45
United States *v.* Bayard, 127 U. S. 251 21
United States *v.* Moser, 266 U. S. 236 42
Whiting's War Powers under the Constitution, 43d ed., 340, 342 45

MAR 6 192
WM. R. STANSBU
CL

Supreme Court of the United States.

OCTOBER TERM, 1925.

No. 232.

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN,
Appellant,

vs.

RICHARD MAYER, EDWIN REIS, KARL B. STRAUSS, *et al.*, ETC.

No. 233.

RICHARD MAYER,
Appellant,

vs.

HOWARD SUTHERLAND, ALIEN PROPERTY CUSTODIAN; EDWIN REIS, KARL B. STRAUSS, *et al.*, ETC.

No. 234.

EDWIN REIS, KARL B. STRAUSS, AND ANNY REIS, ETC.,
Appellants,

vs.

RICHARD MAYER AND HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR EDWIN REIS, *ET AL.*

JOHN CALDWELL MEYERS,
Attorney for EDWIN REIS, *et al.*

JOHN W. DAVIS,
Of Counsel.

Page 14

The Evening Post Job Printing Office, Inc., 154 Fulton St., New York, N. Y.

CONTENTS.

	PAGE
Previous Decisions in these Cases	1
Grounds for the Jurisdiction of this Court	2
Statement of Facts	2
Decision of the District Court	11
Decision of the Circuit Court of Appeals	12
Theories and Contentions of the Parties	13
Specification of Assignment of Errors	15–20

ARGUMENT:

FIRST. The Court erred in deciding that any sum in marks *was due* Richard Mayer as of April 6, 1917. The assets and liabilities of the partnership must be ascertained as of that date, solely for the purpose of limiting Richard Mayer's liability in a continuing business, but not to effect distribution or division of the partnership assets as of that date. No accounting and determination of the distributive shares of the partners could be had until the trial 22

The District Court and Circuit Court of Appeals proceeded on the theory that, upon dissolution, Richard Mayer became a creditor of the partnership 23

Dissolution does not create a debtor and creditor relationship among the partners. 27

The assets and liabilities of the partnership must be ascertained as of April 6, 1917, solely for the purpose of limiting Richard Mayer's liability in a continuing business, but not to effect distribution or division of the partnership assets as of that date 33

No accounting and determination of the distributive shares of the partners could be had until the trial 36

PAGE

SECOND. The account of the German partners shows that they have accounted for everything they received in the currency in which they received it. The loss which has been sustained by the partnership arises exclusively from the depreciation of that currency..... 37

THIRD. The Court erred in translating Mayer's distributive share computed in marks into dollars at the par of exchange ($.2382) for the purpose of rendering a decree in dollars..... 42

FOURTH. The Court erred in holding and ruling that the sum of marks 956,814.31 set aside by the German defendants for reserves should not be included among the liabilities, to the payment of which the defendant, Richard Mayer's share should contribute. 500,000 marks of said reserves constituted a partnership liability.... 49

FIFTH. The Court below erred in failing to hold and rule that the claims of Ely, Leiser, Sanft and Heinstein for percentages of profits of the firm constitute a liability of the firm, and in failing to make provision in the decree for the payment of these liabilities..... 52

SIXTH. The Court below erred in disallowing the sum of 266,432.40 marks paid by the German partners for taxes and the sum of 50,400 marks paid by the German partners to Mayer's relatives at his request..... 55

SEVENTH. The Court erred in ruling that the defendant Richard Mayer is accountable for the sum of only $828,072.72..... 56

PAGE

EIGHTH. The Court erred in allowing Mayer's claim for the premium paid by him in connection with the bond he furnished to the Alien Property Custodian and also in allowing counsel fees 57

NINTH. The correct computation of Richard Mayer's distributive share of the proceeds of all the assets 58

LIST OF CASES

PAGE

Adams v. *Cordis*, 8 Pick. 260 ..... 23, 43, 45
Alcock v. *Hopkins*, 6 Cush. 484 ..... 23, 43
Anderson v. *Allen*, 9 S. & R. 241 31
Arnold v. *Arnold*, 90 N. Y. 580, 583 30

Birge Forbes Co. v. *Heye*, 251 U. S. 317, 321 46
Bradley v. *Bingham*, 137 Mass. 535, 546 61
Brown v. *Hiatts*, 15 Wall. 177 ..... 24, 60
Buchanan v. *Curry*, 19 Johns. (N. Y.) 137 35
Burgess v. *Alliance Ins. Co.*, 10 Allen 221 ..... 23, 43

S. S. "Celia" v. *S. S. "Volturno"* (1921), L. R. 2 App. Cas. 544 46
Clay v. *Field*, 138 U. S. 464, 473 ..... 26, 34, 35
Coe, In re, 157 Fed. 308 33
Commonwealth v. *Haupt*, 10 Allen 38 ..... 23, 43
Crabtree v. *Randall*, 133 Mass. 552 61
Cramer v. *Arthur*, 102 U. S. 612 47
Cramer v. *U. S.*, 7 Ct. Cl. 302 ..... 32, 35
Crawshay v. *Collins*, 15 Ves. 226 28

Dante v. *Minnigio*, 298 Fed. 845 46
Dexter v. *Arnold*, Fed. Cas. No. 3855, 3 Mason 289 61
Di Ferdinando v. *Simon Schmidts & Co.* (1920) 3 K. B. D. 409 46
Douglas v. *U. S.*, 14 Ct. Cl. 1 35

Eumaeus, The, 51 L. J. 7 (Adm. Ct.), 29 Harvard L. Rev. 31

Freeman v. *Freeman*, 136 Mass. 260, 263, 264 28

Goldsboro v. *McWilliams*, Fed. Cas. No. 5518 31
Gommersall v. *Gommersall*, 96 Mass. 60 31
Grant v. *Fletcher*, 283 Fed. 243 ..... 32, 58
Grant v. *Maxwell*, Fed. Cas. No. 5699 47
Griswold v. *Waddington*, 16 Johns. 438 35
Guinness v. *Hicks*, Nos. 80 and 81 (U. S. Sup. Ct.); October Term 1925 46

PAGE

Hargrave v. *Creighton*, 1 Woods, 489; Fed. Cas. No. 6064 45
Hoare v. *Allen*, 2 Dallas 102..... 24
Hoppe v. *Russo-Asiatic Bank*, 235 N. Y. 37..... 46
"Hurona" The, 268 Fed. 910..... 46
Hussey v. *Farlow*, 9 Allen, 263..... 23, 43

Insurance Company v. *Davis*, 95 U. S. 425..... 36

Jackson v. *Chase*, 98 Mass. 286..... 41

Katcher v. *Amer. Express Co.*, 94 N. J. L. 165..... 46

Lamalere v. *Caze*, Fed. Cas. 8003..... 31
Lodge v. *Spooner*, 8 Gray 166..... 23, 43

McNair v. *Ragland*, 16 N. C. (1 Dev. Eq.) 520..... 41
Martin v. *Franklin*, 4 Johns. 124.....23, 43, 45
Martin v. *Hobson*, L. R. 8 Ch. 401..... 31
Mayer v. *Garran* (D. C.) 270 Fed. 229..... 3, 26
Mayer v. *Garran*, (C. C. A.) 278 Fed. 27.....3, 5, 25, 37
Miller v. *Humphrey*, 7 Fed. (2nd) 330..... 46
Miller v. *Lord*, 11 Pick. 11, 26..... 61
Milliken v. *Slote*, 1 Nev. 585, 590..... 31
Moore v. *Huntington*, 17 Wall. 417, 423..... 32, 33
Moore v. *Rawson*, 185 Mass. 264..... 61

Page v. *Levenson*, 281 Fed. 555..... 46
Pote v. *Phillips*, Fed. Cas. No. 11316..... 31
Powell v. *Railway Company*, 36 Fed. 726, 730..... 31

Reiser v. *Parker*, 1 Lowell 262..... 23, 43
Rice v. *Ontario S. B. Co.*, 56 Barb. 387..... 23, 43
Richardson v. *Bank of England*, 4 Myl. & C. 165, 172. 29, 30
Robinson v. *Hall*, 28 How. Prac. (N. Y.) 342..... 45

Simonoff v. *Bank*, 279 Ill. 248..... 46
Skofield v. *Day*, 20 Johns. 102..... 23, 43
Stein & Co., In re, 127 Fed. 547, 549..... 33
Stevenson & Sons, Ltd. v. *Aktiengesellschaft, etc.*, (1918) A. C. 239 35
Swanson v. *Cooke*, 45 Barb. 574..... 23, 43

PAGE

Thorington v. *Smith*, 8 Wall. 1 45

U. S. v. *American Gold Coin*, 24 Fed. Cas. 780 (No. 14,439) 45

U. S. v. *Grossmayer*, 9 Wall. 72 36

"Verdi", The, 268 Fed. 908 47

Wichita Mill etc. v. *Naamlooze, etc.*, 3 Fed. (2nd) 931 47

Zimmerman v. *Harding*, 227 U. S. 489, 494 32

TEXTS

20 Amer. and Eng. Encycl. 841 32
30 Cyc. 655, 659 ..... 28, 30
29 Harvard Law Review, 795 31
Lindley on Partnership 30, 31
Parsons on Partnership (4th Ed.) § 286 29
Story—Conflict of Laws (8th Ed.) p. 426 ..... 45, 47
Story on Partnership (7th Ed.)
Art. 221 27
Art. 325 28
Art. 326-328; 344 29
Art. 348*a* 29
Art. 351 32
Sutherland on Damages (4th Ed.) Sect. 212 41

STATUTES

Judicial Code.
Section 241 (c. 241, 36 Stat. 1157) 2
Act of February 13, 1925 (43 Stat. 936) 2
Trading with the Enemy Act.
Section 2 (c. 106, 40 Stat. 411) 36
Section 17 (c. 106, 40 Stat. 425) 2
28 Stat. 552 47

Supreme Court of the United States,

OCTOBER TERM, 1925.

No. 232

HOWARD SUTHERLAND, as Alien Property Custodian, Appellant,

vs.

RICHARD MAYER, EDWIN REIS, KARL B. STRAUSS, *et al.*, etc.,

No. 233

RICHARD MAYER, Appellant,

vs.

HOWARD SUTHERLAND, Alien Property Custodian; EDWIN REIS, KARL B. STRAUSS, *et al.*, etc.

No. 234

EDWIN REIS, KARL B. STRAUSS, and ANNY REIS, etc., Appellants,

vs.

RICHARD MAYER and HOWARD SUTHERLAND, as Alien Property Custodian.

BRIEF FOR EDWIN REIS, *ET AL.*

Previous Decisions in these Cases.

The opinion of the Circuit Court of Appeals in these cases is reported in 1 Fed. (2nd) 419. The opinion of the District Court has not been reported, but may be found at pages 68 *et seq.* of the Record.

Grounds for the Jurisdiction of this Court.

Case 232 is before this court on appeal by the Alien Property Custodian, plaintiff in the District Court, from the final decree in the Circuit Court of Appeals for the First Circuit, dated September 18, 1924 (R. 155-156), affirming with modification the decree of the District Court of the United States for the district of Massachusetts, entered on October 2, 1923 (R. 66).

Cases 233 and 234 are before the court upon cross appeals prosecuted, respectively, by Richard Mayer, a defendant in the District Court, and by defendants Edwin Reis, Karl B. Strauss and Anny Reis, as trustees for Anneliese Reis and Ruth F. Reis, from the same decree of the Circuit Court of Appeals for the First Circuit (R. 155, 156). These appeals were allowed in December, 1924 (R. 156, 159, 162), and therefore prior to the act of February 13, 1925, and were prosecuted pursuant to Section 241 of the Judicial Code (Sec. 241, 36 Stat. 1157) which had existed at the time of such appeal.

The District Court's jurisdiction is founded under Section 17 of the Trading with the Enemy Act (Sec. 17; 40 Stat. 425) by which section the provisions of the Judicial Code with reference to appeals were extended to the provisions of the Trading with the Enemy Act.

Statement of Facts.

These cases were begun by suit brought by Thomas W. Miller, as Alien Property Custodian of the United States, against Richard Mayer, of Boston, Massachusetts; Edwin Reis and Karl B. Strauss, of Heidelberg, Germany, surviving partners of the firm of Reis & Co., Estate of Ludwig Reis, lately of Mannheim, Baden, Germany; Anny Reis, individually and as trustee for Anneliese Reis and Ruth F. Reis, both her minor children, of said Mannheim; the Richard Mayer Company and the Anglo-American Cotton Company, both corporations duly organized under the laws of the Commonwealth of Massachusetts.

Richard Mayer was the American partner of the German

firm of Reis & Co. and was domiciled in Boston, having charge of the firm's branch in that city. In 1914 and 1915 Mayer had organized two Massachusetts corporations, the Richard Mayer Company and the Anglo-American Cotton Company, capitalizing them with assets of Reis & Co. in his hands, and holding or controlling, through dummies, their capital stock. After the outbreak of the war between the United States and Germany the Alien Property Custodian in 1918 seized as enemy property the capital stock of these corporations and other assets and securities of the partnership. Mayer filed a claim for the return of the property, alleging a dissolution of the partnership on the declaration of war, that he had taken all the property over as his own, and that he believed the German partners had no claim on him. His claim being refused, Mayer filed a bill in equity against the Custodian, pleading an alleged dissolution agreement of February 7, 1917 (determined by the court to be "void and of no effect"), repeating his claim of ownership of the American assets, and asserting his right to the possession of the American assets to secure his lien upon a partnership accounting. In the case of *Mayer* vs. *Garran* (278 Fed. 27, modifying and affirming 270 Fed. 229), the Circuit Court of Appeals for the First Circuit (Judge Johnson, the trial judge in the present suit, delivering the opinion of the court) held that the partnership was dissolved upon the outbreak of war, April 6, 1917; that, after the declaration of war, all commercial intercourse between the American and German partners was unlawful, and opposed to the public policy of the United States; that under the partnership articles Mayer was entitled upon distribution to have repaid him out of the assets of the partnership the amount of his capital investment, with interest, and also 20% of the net profits earned by the partnership and was liable for 20% of the losses; "that, upon the present state of the evidence, this court is unable to state an account as between the parties, or Richard Mayer and the Alien Property Custodian, there being no evidence of the actual value of the American property or of the German or English property, and there being no evidence of the liabilities of the firm;

* * * that the complainant on the dissolution of the partnership with the outbreak of war had a lien on the American assets and their proceeds for what was due him from the partnership on an accounting of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting; that the plaintiff is entitled to the immediate repossession of all property so seized and the net proceeds arising therefrom; that the plaintiff shall hold possession of the money and property so delivered to him under the terms and provisions of Section 8(*a*) of the Trading with the Enemy Act, and of the rights and duties in respect thereof which are set forth in paragraph 10 of this decree" (quoted in opinion of Circuit Court of Appeals, R. 150).

In June, 1922, such property as remained in the hands of the Alien Property Custodian was returned to Mayer, who thereupon filed with the Custodian a document or statement entitled an "Accounting" (see Exhibit A to answer of Richard Mayer, R. 27), alleging that there was no surplus to be paid over to that officer. This alleged account was deemed insufficient and rejected by the Alien Property Custodian, who thereupon instituted the present suit.

The bill in the present suit seeks an accounting by Richard Mayer and the German partners, respectively, of the cash value of partnership assets in their possession or subject to their control; prays that Richard Mayer be charged with all losses of partnership assets occasioned by his diversion and conversion thereof to his own use; that the amount due Mayer by the partnership be determined and established as of the date of final decree; and that Mayer thereupon be ordered to surrender to the Alien Property Custodian the surplus which shall remain out of the assets of the partnership of Reis & Co. in his hands, after the satisfaction of the amount, if any, due him upon a true and proper accounting, the bill praying that in determining the amount due him from the partnership, on accounting, the defendant Richard Mayer be credited with the value of his interest in the European assets of the partnership (R. 1-7).

The Alien Property Custodian is admittedly entitled to all of the American assets of the partnership except the distributive share of Richard Mayer. All the surviving German partners of the firm of Reis & Co., as well as the representative and beneficiaries of the estate of Ludwig Reis, the only deceased partner, have appeared and filed their answer to the bill of complaint herein, and have annexed to their answer (see Exhibit II to answer of Edwin Reis, *et al.*, R. 41) a full and true account of the European assets of the firm in their possession and subject to their control on April 6, 1917, and thereafter, and of Richard Mayer's interest therein, and have joined in the prayer of the bill that Richard Mayer be required to account for the partnership assets in his hands or subject to his control (R. 34-40).

The defendant Richard Mayer also answered, relying upon and annexing to his answer, as Exhibit A thereto, the statement (R. 27) which he had previously submitted to the Alien Property Custodian as an accounting, but which had been rejected by the Custodian.

The trial was had before Honorable Charles F. Johnson, Circuit Judge, sitting as District Judge, and continued five days, March 26 to 31, 1923 (R. 65). The trial court took judicial notice of the printed record in the Circuit Court of Appeals in the case of *Mayer* v. *Garvan,* 278 Fed. 27, together with the final decree entered therein on May 4, 1922, pursuant to mandate. Edwin Reis appeared and testified on the trial (R. 81 *et seq.*), producing the firm's books of account, which he had brought over from Germany and which included certain private records which had been withheld from Messrs. Price Waterhouse & Co. (see opinion of District Court, R. 69). Richard Mayer was in court but did not testify. A final decree was entered on October 2, 1923 (R. 66), the court having rendered its opinion on June 16, 1923 (R. 68), in accordance with which the decree was entered. From this decree appeals were taken to the United States Circuit Court of Appeals for the First Circuit by all parties. The said Circuit Court of Appeals affirmed the

decree with certain modifications (R. 155) in accordance with its opinion (R. 149), reported as *Miller* vs. *Mayer, et al.*, 1 Fed. (2nd) 419. From this decree of the Circuit Court of Appeals the present appeals are taken.

The firm of Reis & Co., prior to 1913, consisted of Edwin Reis and Ludwig Reis, residents of Germany, and Karl B. Strauss, a naturalized citizen of Great Britain, but a German by birth. This firm had succeeded to the business of dealing in cotton waste formerly conducted by the father of the Messrs. Reis. Richard Mayer was born in Germany, but took out naturalization papers in the United States in 1912. In 1898 he was sent to Boston by the firm of Reis & Co., and for some time acted as its agent, but subsequently left its employ and organized a similar business which he conducted on his own account. In 1913 he went to Germany and was admitted into the firm as an "additional, personal, liable partner". The partnership agreement was executed at Friedrichsfeld, Germany, and is in the German language, but a translation thereof is annexed as Exhibit A to the bill of complaint (R. 7). In the first paragraph thereof it is provided that Mr. Mayer shall make his domicile in Boston and conduct the American business of the partnership. The agreement also provided that Mayer should bring into the partnership the business which he had previously conducted in Boston with all its assets and liabilities, and which he guaranteed to inventory marks 200,000. After inventory this was credited to Mayer on the firm's private ledger at Friedrichsfeld (the only place where the capital investment of the partners was shown [R. 81]) at marks 206,054.02 (R. 57). By the partnership agreement Edwin Reis was required to contribute to the capital of the firm marks 1,179,845.03; Ludwig Reis marks 1,136,867.26 and Karl B. Strauss marks 348,313.24, these gentlemen guaranteeing in favor of Richard Mayer the correctness of this inventory. Mayer's capital contribution was therefore approximately 7% of the total capital contribution and invested capital of the firm, exclusive of the capital contribution made by Mrs. Wilhelm Reis, the special partner. The amount

of her contribution did not appear, but it was provided that she was to have interest on her investment, whatever it was, at 4½%, but should not participate in gain or loss. Each of the personally liable or general partners was to receive interest at 4½% upon the capital he furnished and a fixed salary (marks 16,000 per annum in the case of Richard Mayer) and was entitled to draw in the course of each partnership year from the firm an amount equal to his salary and the interest due on his investment. The participation in gain and loss was to be as follows: Edwin Reis 27½%; Ludwig Reis 27½%; Karl B. Strauss 25% and Richard Mayer 20%. Profits of the partnership were not to be withdrawn, but were to be credited to the capital account of the several partners.

Ludwig Reis died on January 10, 1918, leaving him surviving a widow and two children. The widow in her own right and as trustee for her minor children is a party defendant in the present action.

The "main seat" of the partnership was at Friedrichsfeld, Germany. The firm maintained branch offices in Germany, and in Manchester, England, and Boston, Massachusetts. Branch offices kept separate books for their own convenience, and functioned merely as buying and selling agencies for the principal office in Friedrichsfeld (R. 82). Inventories were made up from reports sent by the branch offices to Friedrichsfeld, and the balance sheets at Friedrichsfeld included inventories at Friedrichsfeld, Herzberg, Franzenthal, Boston and Manchester (R. 82).

After the outbreak of the war between England and Germany, the property in Manchester was seized by the English Alien Property Custodian and was sold, the firm obtaining nothing out of the assets in England. On the contrary there were debts of the English branch offices to English banks for which the Friedrichsfeld office had to stand good. To take care of this indebtedness the firm made a reserve on its books at Friedrichsfeld of about marks 700,000 to marks 800,000, but had to pay much more than this amount. Up to the date of trial marks 900,000 had been actually paid to

the clearing office according to the terms of the Treaty of Versailles, and it appeared that subsequent additional payments would be required to be made upon demand, the accounting with the English trustee made by the German partners prior to the date of the trial being only a temporary accounting. The total liability in connection with the English branch of the business was £35,000 (R. 82). In order to facilitate the accounting and so as not to leave open the unascertained liabilities in connection with the English branch which might be held to be a bar to an accounting, the German partners made a very substantial concession in assuming all responsibility for further payments that will have to be made in connection with the English debts. Mayer is forever released from further liability to contribute to this indebtedness (See: Exhibit II, R. 42).

By German law the outbreak of the war between the United States and Germany, did not dissolve the partnership, and thereafter the partnership continued to transact business at Friedrichsfeld, and to carry Richard Mayer as a partner on the books at the home office of the firm (R. 83). Mayer approved of this arrangement (R. 90). Likewise Mayer continued, up to the time the property was seized by the Alien Property Custodian (September, 1918), to carry on the business in this country in the same way as before, no attempt being made by Richard Mayer to liquidate the assets and state an account (R. 92, 93).

On December 31, 1916 the value on the firm's books, of the German assets, exclusive of liabilities, stood at marks 15,282,170.55 (R. 85) and the net value at marks 11,489,168.41 (R. 51). The value of the German assets on April 6, 1917 was not stated on the firm's books, inasmuch as no inventory was taken on that day, but the uncontradicted testimony of Edward Reis (R. 85) shows the book value of the assets to be practically the same on April 6, 1917 as on December 31, 1916. The accounting rendered by the German partners indicated the book value of Richard Mayer's share (his capital account) in the German assets of the firm to be on December 31,

1916, marks 2,107,499.89 (R. 53) and his share as of April 6, 1917 (which was computed by crediting to him his proportion of profits for the period December 31, 1916 to April 6, 1917 and debiting him with certain taxes and payments to relatives made for his account) amounted to marks 1,836,358.80 (R. 60). The actual value of his share after such credits and debits was marks 1,905,860.87 (R. 146).

The great bulk of the German assets on April 6, 1917 were cash, bills receivable and merchandise. Taking the statement of the assets it appears that lands, buildings, plants and machinery aggregated only a little over 848,000 marks out of something over 15,000,000 marks (R. 85). The merchandise, accounts receivable and investments of the firm were all turned into cash during the year 1917 (R. 43, 82). The plant at Herzberg was sold during the year 1919, and the plant at Franzenthal during the early part of 1920, each bringing on sale about twice book value, the increase in the purchase price over the book value being due to the depreciation of the mark (R. 83). On April 6, 1917, the book values of these two plants represented their actual values (R. 85). The Friedrichsfeld plant, whose book value on April 6, 1917, was marks 287,492.66, and whose actual value on said date was marks 635,028 (R. 146) had not been sold up to the time of trial and its value at that time was conceded by all the partners to be 81,000,000 marks, the increase in value likewise being due to the depreciation of the mark (R. 83). (Note—the figure "18,000,000 marks" at the top of page 83 in the Record is a typographical error, the correct figure is 80,000,000 marks—see Exhibit XIII, R. 146, 147). On the trial Edwin Reis testified that since April 6, 1917, the German partners had continued in the form of cash on deposit in banks a sum sufficient to pay out the capital interest of Mayer as shown by the books, and that they still had such an amount in the form of cash in German marks.

The firm's accounts were carried in marks. The firm had no fixed arrangement about figuring marks into dollars or dollars into marks, but had always used the actual rate

according to the rate of exchange existing at the time (R. 83; Defendant's Exhibit IV, R. 137). Mayer himself in 1916 in figuring with witness Laible the value of his share in the German assets employed the current rate of exchange (R. 93). There had never been any agreement of any kind between the partners as to the rate of exchange to be employed in the partnership account, nor had there ever been any agreement of any kind between the partners as to an accounting other than the written partnership agreement (R. 84).

Richard Mayer was in Germany in the latter part of the year 1914 at which time he looked over the books. The assets of the Boston branch were kept in marks on the partnership books in Friedrichsfeld until the latter part of 1914 or the early part of 1915, when regular reports were no longer received. The share of Richard Mayer of the profits was credited to him annually in marks on the books in the private ledger at Friedrichsfeld, Edwin Reis himself making the entries until 1916, a firm of chartered accountants (R. 86) making the entries thereafter.

Prior to the outbreak of the war about $2,500,000 was sent over to Richard Mayer by Reis & Co. for the purchase of cotton. A very large part of this was not needed by Mayer, and the German partners cabled frequently for the return of the money not needed, which amounted to more than $1.000,000. About $300,000 was returned, in the year 1915. The German partners demanded $600,000 continuously, but never received it (R. 90, 91). Counsel for Mayer conceded that the balance not remitted by Mayer to the German partners was a part of the assets in America.

It is conceded that the value of the American assets in the possession of Richard Mayer at the outbreak of war was $910,014.07 (Exhibit A to Answer of Richard Mayer, R. 31). The value of these assets at the time of trial amounted to only $828,072.72 (R. 34), the difference between the two figures being accounted for by the total loss of the assets of the Anglo-American Cotton Company (R. 31). This loss occurred

partly before the assets were seized by the Custodian and partly during the time he held them. At the trial counsel for the Alien Property Custodian consented to accept $828,072.72 as the correct figure for which Richard Mayer is accountable, on condition that the accounting proceed as of the time of trial, and that all losses of partnership property be apportioned equally among all partners (R. 81).

The German partners feel bound by the waiver of any surcharge, made by counsel for the Custodian, provided that waiver be not extended beyond the scope to which it was limited by counsel for the Custodian.

On the trial the District Court proceeded to state the account between the partners and to determine Richard Mayer's liability in the following manner (see opinion of District Court, R. 69-71).

Mayer's interest in German assets as shown by firm's books on December 31, 1916 (R. 53) marks	2,107,499.89
Add: 20% of actual value of lands, buildings and machinery on March 6, 1917 over book value (R. 146)	69,507.07
20% of reserves (R. 87)	191,362.86
20% of profits December 31, 1916 to March 6, 1917, admitted to be (R. 60)	45,686.31
Total Mayer's share in net assets in Germany on April 6, 1917 marks	2,414,056.12
Deduct: German taxes assessed on Mayer's partnership interest during years 1914, 1915 and 1916 and paid by the German partners after April 6, 1917 (R. 60)	266,432.40
Payments by German partners to Mayer's relatives in Germany after April 6, 1917 (R. 60)	50,400
Total Mayer's share in net assets in Germany after deduction and for which German partners must account as of April 6, 1917	2,097,223.72

This amount, *i. e.* marks 2,097,223.72, is converted by the District Court into United States dollars at the remarkable

exchange rate of one mark equals 23.82 cents, *i. e.* on a theoretical gold standard basis, (R. 72) and to the result in dollars ($499,558.69) is added 20% of the American assets, or $165, 614.54, and the result, $665,173.23, found to be Richard Mayer's share in all the assets of the firm (R. 73). Deducting this sum from the amount for which Mayer admitted his accountability, namely, $828,072.72, there was a surplus of $162,899.49 which the District Court ruled was to be returned to the Alien Property Custodian to be administered under the Trading with the Enemy Act (R. 73).

The decree of the District Court required that Richard Mayer pay this sum to the Alien Property Custodian less $5,600 or 80% of the amount of $7,000 theretofore deposited with Mr. McClennen, as an officer of the court, for the purpose of paying any judgment that might be recovered by Julius Laible in a pending suit against Reis & Co. The decree also provided that Richard Mayer should pay to Mr. McClennen as an officer of the court $14,000 as security to satisfy 20% of any judgment that might be recovered in the suits at law brought by the United States of America against the Richard Mayer Company and against Richard Mayer *et al.*, individually, to recover the amount of $62,595.03 paid by the War Risk Insurance Bureau in consequence of the loss of cargo of the Steamship "Carolyn", with interest from October 17, 1916. Any recovery in this case was to be paid 20% by Richard Mayer and 80% by the Alien Property Custodian (R. 66).

On appeal the Circuit Court of Appeals affirmed the opinion of the District Court with the following modifications (R. 149, 154):

It disallowed tax payments made by the German partners for Mayer's account and aggregating.....	marks	266,432.40
Also the payments to relatives (except 600 marks paid before the war) aggregating	marks	49,800.00
It allowed Mayer's claim for $4,000 covering premium on bond given at		

the time of the restoration of property by the Custodian.....	$4,000.00
Also his claim for counsel fees and other disbursements incurred in the suit of *Mayer* vs. *Garvan*—not yet determined.	

The effect of such disallowances has been to increase Mayer's share in the German assets by marks 316,232.40 or $76,326.56, if the rate of 23.82 cents per mark be employed. Crediting this amount and the bond premium and attorney's fees against Richard Mayer's liabilities to the Custodian, his net accountability would be reduced to considerably less than $80,000.

The accounting on the trial was the first accounting between the partners—prior to the trial no accounting was ever made or attempted by the partners or by Richard Mayer nor was an accounting possible.

Theories and Contentions of the Parties.

The assignments of error indicate not only the dispute of the parties as to the propriety of crediting the German partners and Richard Mayer with certain payments made by them respectively but also their fundamental differences as to the true and proper theory and basis of partnership accounting, and as to the true and proper rate of exchange to be employed in converting marks into dollars.

The Alien Property Custodian and the German partners agree as to the manner in which the accounting should be stated, differing only as to certain minor items of charges and credits.

The Alien Property Custodian and the German partners contend that the accounting must be ascertained and stated upon the value of the partnership assets or their proceeds at the time of trial or at the time the account is determined and stated by the court, since this proceeding is the first occasion when all the parties and the evidence necessary for an accounting have been available for that purpose; that the

American assets still belong to the dissolved partnership and are 80% enemy owned; that the German assets or their proceeds still belong to the partnership and are 80% enemy owned; that the depreciation in the value of the German assets caused by the depreciation in the value of the marks by which their value is measured, and of which they principally consist, must be shared ratably by all the partners, including Mayer, until final accounting and distribution; that Mayer is likewise entitled to the benefit of any appreciation in the value of the German assets until such final accounting; that the record contains uncontroverted evidence establishing such values, and that the account should be stated as of March 26, 1923, when for the first time the parties came together for an accounting, as follows:

The present value of the American assets for which Mayer admits his accountability (Exhibit A to Mayer's Answer, R. 34) is	$828,072.72
From this sum deduct Mayer's 20% interest therein, or	$165,614.54
Leaving, as the Custodian's share of the American assets	$662,458.18
From this sum should also be deducted the value of Mayer's interest in the German assets, which on April 6, 1917, had been marks 1,905,860.87 (R. 146) (District Court figure M. 2,097,223.72), but which on March 26, 1923, the date of the accounting, were worth	‡M. 18,206,591.22
The value of Mayer's interest in the German assets, translated into dollars on the same date when the account was stated at the rate of exchange of .0048 cents to the mark (R. 80, 151), is	$873.92
Added to the value of Mayer's interest in the American assets or	$165,614.54
Mayer's total interest is	$166,488.46

Deducting this sum from the amount with which Mayer is admittedly chargeable, or	$828,072.72
The Custodian's ascertained share in the American assets, on the day of accounting, was	$661,584.26

‡ Exclusive of interest, if allowable, and exclusive of profits earned subsequent to March 6, 1917, and prior to the accounting.

Defendant Mayer contends that the partnership was terminated by the outbreak of war; that the assets must be valued as of that date; that the value of his share so determined must be deemed a *debt* due on April 6, 1917, by the German partners to him, though no accounting was or could be had on that date; that the value or amount in dollars of his share of the German assets must be determined by the "true value" (sic) of the mark, *i. e.,* the theoretical gold par value of the mark (23.82 cents) and not by the commercial exchange value of the mark at the time of the accounting (.0048 cents). He of course maintains the propriety of the allowance of various credits and disallowance of various debits to his account affirmed by the Circuit Court of Appeals, but also contends that he should have been allowed interest for loss of use of the American property during the period of its possession by the Alien Property Custodian.

All parties feeling aggrieved by the decree or some of the provisions thereof, have appealed to this court, and in connection with their respective appeals have filed the following assignments of error:

The Alien Property Custodian assigns error by the court (R. 157).

1. In holding and ruling that Richard Mayer's distributive share in the European assets of the partnership of Reis & Company ascertained in German marks should be translated into American dollars at the rate of $.2382.

2. In failing to hold and rule that the number of German marks payable to Richard Mayer as his dis-

tributive share in the European assets of the partnership must be translated into dollars at the rate of exchange current at the date when the accounting was stated in this proceeding.

3. In failing to hold and rule that the Alien Property Custodian was entitled to $661,584.26 as the enemy share of the American assets of the partnership of Reis & Company.

4. In holding and ruling that the German partners after April 6, 1917 continued the German business of the partnership on their own account, treating the German assets as their own.

5. In failing to hold and rule that Richard Mayer continued the American busineses of the partnership after April 6, 1917 as a going business on his own account without authority therefor from his partners.

6. In holding and ruling that the intrinsic value of the German marks in which the German assets of the partnership was measured was the amount of gold contained in .2382 of an American dollar.

7. In holding and ruling that Richard Mayer is entitled to charge against the firm assets in his hands, the sum of $4,000 paid out by him as a premium on a surety bond.

8. In holding and ruling that Richard Mayer was not chargeable on a partnership accounting for the sum of 266,432.40 marks paid by the German partners as taxes upon Mayer's interest in the partnership property in Germany assessed during the years 1914, 1915, and 1916.

9. In holding and ruling that Richard Mayer was not chargeable with the sum of 50,400 marks paid by the direction of Mayer to his relatives in Germany.

10. In holding and ruling that on the outbreak of the war the German partners appropriated Richard Mayer's interest to themselves, so that they held no interest of his to protect.

11. In holding that Richard Mayer's claim for counsel fees and other disbursements incurred in the prosecution of the former suit of *Mayer* vs. *Garvan* should be

charged against the Alien Property Custodian's share of the assets in Mayer's hands on accounting.

12. In holding and ruling that the liability for reserves as shown on the balance sheet of the partnership on December 31, 1916, should not be allowed as a liability of the firm in a partnership accounting.

13. In failing to hold and rule that the European assets of the partnership have depreciated in value—as measured in currency of the United States—because of the depreciation in the value of Germany currency.

14. In failing to hold and rule that no fault or neglect on the part of individual partners caused the depreciation in the value of the European assets of the partnership since the declaration of war.

15. In holding and ruling that none of the depreciation in the value of the European assets of the partnership after dissolution is chargeable to Richard Mayer.

16. In holding and ruling that the Alien Property Custodian is chargeable with the value of Mayer's share in the European assets at the time of dissolution, without allowance for depreciation in the value of those assets thereafter.

17. In holding and ruling that the enemy share of American assets payable to the Alien Property Custodian on account is to be diminished because of the failure of the German partners to liquidate the European assets after the outbreak of war.

18. In holding and ruling that Richard Mayer was entitled to a credit on April 6th, 1917 on account of the German assets of the partnership.

19. In failing to hold and rule that Richard Mayer was not entitled to any credit on account of the German assets of the partnership until an account of all the affairs of the partnership could be had.

20. In failing to hold and rule that the equitable title to the partnership property remains unaffected by the outbreak of the war or by any act of the partners until final accounting and distribution.

* * * * * *

The German partners claim that the court erred (R. 159):

1. In holding and ruling that Richard Mayer's distributive share of the European assets of the partnership of Reis & Company ascertained in German marks should be translated into American dollars at the rate of $.2382.

2. In failing to hold and rule that the term "marks" as used by the German partners in the account of the partnership assets in Germany and as used by the witness Edwin Reis, in his testimony at the trial referred to the then current paper marks as distinguished from gold marks.

3. In holding and ruling that the marks in question in this case had any intrinsic value in gold at any time after the passage of the German legal tender acts.

4. In holding and ruling that the intrinsic value of the German marks in which the German assets of the partnership were measured was the amount of gold contained in .2382 of an American dollar.

5. In failing to hold and rule that the number of German marks payable to Richard Mayer as his distributive share in the European assets of the partnership must be translated into dollars at the rate of exchange current at the date when the accounting was stated in this proceeding.

6. In holding and ruling that Richard Mayer was entitled to a credit on April 6th, 1917 on account of the German assets of the partnership.

7. In failing to hold and rule that Richard Mayer was not entitled to any credit on account of the German assets of the partnership until an accounting of all the affairs of the partnership could be had.

8. In holding and ruling that the Alien Property Custodian is chargeable with the value of Mayer's share in the European assets at the time of dissolution, without allowance for depreciation in the value of those assets thereafter.

9. In holding and ruling that Richard Mayer should not share the losses occasioned by the depreciation in the value of the European assets of the partnership after dissolution.

10. In failing to hold and rule that the title to the partnership property remains unaffected by the outbreak of the war or by any act of the partners until final accounting and distribution.

11. In failing to hold and rule that the European assets of the partnership have depreciated in value—as measured in currency of the United States—because of the depreciation in the value of German currency.

12. In failing to hold and rule that no fault or neglect on the part of the individual partners caused the depreciation in the value of the European assets of the partnership since April 6th, 1917.

13. In holding and ruling that the German partners became liable for the value of Richard Mayer's share of the German assets at the time of dissolution on account of failure to liquidate.

14. In failing to hold and rule that no loss whatsoever was sustained in this case by failure to liquidate.

15. In holding and ruling that the German partners after April 6th, 1917 continued the German business of the partnership on their own account, treating the German assets as their own.

16. In failing to hold and rule that Richard Mayer continued the American business of the partnership after April 6th, 1917 as a going business.

17. In holding and ruling that Richard Mayer's distributive share in the European assets of Reis & Company is 2,364,056.12 marks, arrived at as follows: 2,097,223.72 marks found by the District Court as Richard Mayer's share; 226,432.40 marks paid by the German partners to the German Government as taxes levied against Mayer's share of the German assets, and disallowed as a credit in the account of the German partners by the Circuit Court of Appeals; 50,400 marks paid by the German partners to Mayer's relatives at his request, and also disallowed as a credit in the account of the German partners by the Circuit Court of Appeals.

18. In failing to hold and rule that Richard Mayer's distributive share in the European assets of Reis & Company as of April 6th, 1917, is 18,206,591.22 marks exclusive of profits since that date or interest or the sum of

27,000,000 marks inclusive of profits or 19,121,404.44 marks inclusive of interest.

19. In failing to hold and rule that the Alien Property Custodian was entitled to $661,584.26 as the German partners' share of the American assets of the firm of Reis & Co.

20. In holding and ruling that the sum of 956,814.31 marks set aside by the German partners for reserves should not be included among the liabilities to the payment of which Richard Mayer's share should contribute.

21. In holding and ruling that Richard Mayer is entitled to charge against the firm assets in his hands the sum of $4,000.00 paid out by him as a premium on a surety bond.

22. In holding and ruling that Richard Mayer was not chargeable on a partnership accounting for the sum of 266,432.40 marks paid by the German partners as taxes upon Mayer's interest in the partnership property in Germany assessed during the years 1914, 1915 and 1916.

23. In holding and ruling that Richard Mayer was not chargeable with the sum of 50,400 marks paid by the direction of Mayer to his relatives in Germany.

24. In holding and ruling that Richard Mayer's claim for counsel fees and other didsbursements incurred in the prosecution of the former suit of *Mayer* v. *Garvan* should be charged against the Alien Property Custodian's share of the assets of Mayer's hands.

25. In failing to hold and rule that the claims of the employees Ely, Leiser, Sanft and Heinstein for percentages of profits of the firm constitute liabilities of the co-partners, and in failing to make provision in the decree of the payment of these liabilities.

(Richard Mayer) should have been allowed interest or other compensation for loss of use of the property taken without right by the Alien Property Custodian in 1918 claiming it as the property of Mayer's German former partners and until its return in 1922.

Argument.

With respect to the assignments of error filed on behalf of the German partners, and ignoring such apparent repetitions thereon as may have been dictated by technical considerations, it is submitted as follows:

FIRST: The Court erred in deciding that any sum in marks *was due* Richard Mayer as of April 6, 1917. The assets and liabilities of the partnership must be ascertained as of that date, solely for the purpose of limiting Richard Mayer's liability in a continuing business, but not to effect *distribution* or *division* of the partnership assets as of that date. No accounting and determination of the distributive shares of the partners could be had until the trial.

SECOND: The account of the German partners shows that they have accounted for everything they received in the currency in which they received it. The loss which has been sustained by the partnership arises exclusively from the depreciation of that currency.

THIRD: The Court erred in translating Mayer's distribution share, computed in marks, into dollars at the par of exchange ($.2382) for the purpose of rendering a decree in dollars, and in failing to employ the commercial rate of exchange current at the time of the accounting, *i. e.* on the trial.

FOURTH: The Court erred in holding and ruling that the sum of marks 956,814.31 set aside by the German defendants for reserves should not be included among the liabilities, to the payment of which the defendant Richard Mayer's share should contribute. 500,000 marks of said reserves constituted a partnership liability.

FIFTH: The Court erred in failing to hold and rule, that the claims of Ely, Leiser, Sanft and Heinstein for percent-

ages of profits of the firm constitute a liability of the firm and in failing to make provision in the decree for the payment of these liabilities.

SIXTH: The Court below erred in disallowing the sum of 266,432.40 marks paid by the German partners for taxes and the sum of 50,400 marks paid by the German partners to Mayer's relatives at his request.

SEVENTH: The Court erred in ruling that defendant Richard Mayer is accountable for the sum of only $828,072.72.

EIGHTH: The Court erred in allowing Mayer's claim for premium in connection with the bond he furnished to the Alien Property Custodian and in allowing counsel fees.

NINTH: The correct computation of Richard Mayer's distributive share of all the assets.

FIRST.

The Court erred in deciding that any sum in marks *was due* Richard Mayer as of April 6, 1917. The assets and liabilities of the partnership must be ascertained as of that date solely for the purpose of limiting Richard Mayer's liability in a continuing business, but not to effect distribution or division of the partnership assets as of that date. No accounting and determination of the distributive shares of the partners could be had until the trial.

The two principal errors complained of on this appeal by the German partners are that, for the purpose of a partnership division or distribution the Court ascertained Richard Mayer's distributive share in the German assets as

of April 6, 1917, and not as of the date of trial, March, 1923, and converted the same into dollars at the par of exchange.

This accounting formula was adopted under the mistaken belief that the occurrence of war, operating as a dissolution of the partnership, automatically established, as of April 6, 1917, a debit and credit relation between the partners and fixed Richard Mayer's distributive share as of April 6, 1917 (whenever ascertained) as a debt due, *eo instanti*, to him by the German partners. No importance was attached by the Court to the fact that no partnership accounting was possible until 1923, and the decree in *Mayer* vs. *Garvan* had so found (R. 150).

The District Court and Circuit Court of Appeals proceeded on the theory that, upon dissolution, Richard Mayer became a creditor of the partnership.

That the District Court regarded Mayer's distributive share as of April 6, 1917, as a debt appears from the following parts of its opinion (R. 72, 73).

> "There are, however, respectable authorities in the United States which hold that in an action for money due and payable in a foreign country, the rate of exchange should not be taken into consideration in computing the sum due in American money; but that the par of exchange should govern."
>
> *Adams* v. *Cordis*, 8 Pick. 260;
> *Alcock* v. *Hopkins*, 6 Cush. 484;
> *Lodge* v. *Spooner*, 8 Gray 166;
> *Commonwealth* v. *Haupt*, 10 Allen 38;
> *Burgess* v. *Alliance Ins. Co.*, 10 Allen 221;
> *Swanson* v. *Cooke*, 45 Barb. 387 (574);
> *Rice* v. *Ontario S. B. Co.*, 56 Barb. 387;
> *Martin* v. *Franklin*, 4 Johns. 124;
> *Skofield* v. *Day*, 20 Johns. 102;
> *Hussey* v. *Farlow*, 9 Allen 263;
> *Reiser* v. *Parker*, 1 Lowell 262.

"Translating the distributive share of Richard Mayer into European assets, M 2,097,223.72 into dollars at .2382 to the mark would make $499,558.69" (R. pp. 92, 93),

and also (R. 71):

"It was held in *Brown* v. *Hiatts*, 15 Wall. 177, that interest did not run during the war on a debt owing to an enemy, quoting with approval the decision of the Supreme Court of Pennsylvania in *Hoare* v. *Allen*, 2 Dallas 102."

and also (R. 74):

"Not only because the distributive share of Mayer had not been determined, but because, after the outbreak of the war payment to him would have been illegal, I find the German partners are not liable for payment of interest on Mayer's distributive share."

and also (R. 72):

"I find that the German partners should account as of April 6th, 1917, for Mayer's share at M. 2,097,223.72."

The opinion of the Circuit Court of Appeals does not indicate any quarrel with the District Court's theory, but rather an approval of the same. In the opinion Judge Hale said (R. 152):

"We have no doubt that the accounting in this case must be as of the date of dissolution and termination of the partnership, April 6, 1917, on and after which time the German partners conducted the business in Germany on their own account, treating the assets there located as their own."

Thus it appears that the Trial Court and the Circuit Court of Appeals, having found some authority for the employment of the par of exchange in converting into dollars a *debt payable* in a foreign country and sued on here, proceeded to employ that method of conversion in the instant case. In holding that the German partners must account

as of April 6, 1917, for Mayer's share, the Court does not merely set a limit beyond which Mayer's liability in a continuing business may not be further extended, but it definitely fixes the amount which became due to Richard Mayer as of that date, regardless of inventory or other depreciation or subsequent losses not attributable to the fault of individual partners. In so doing the court was undoubtedly influenced by the argument strenuously urged by counsel for defendant Mayer, who, both in the oral argument before the court and in his brief, contended that Mayer's distributive share was a debt due him on April 6, 1917. To sustain this proposition, counsel for Richard Mayer relied on an unhappy wording of the decree in the case of *Mayer* v. *Garvan*. In that case the decree contained the finding:

> "That the complainant on the dissolution of the partnership with the outbreak of war, had a lien on the American assets and their proceeds for what was due him from the partnership on an accounting of the affairs of the partnership, and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting."

Counsel for defendant Richard Mayer seized upon the words "what was due him from the partnership", and contended that by the use of the words "was due him", the Court could have only meant that something was due him on April 6th, 1917. This view was apparently also taken by the Trial Court, notwithstanding the fact that the learned trial Justice himself had written the opinion in the Circuit Court of Appeals, 278 Fed. 27, in which he substituted for the words "what was due him", the words "which might be due him after liquidation"—the relevant language of the opinion being as follows:

> "Whether title to the American assets after the declaration of war was in the partnership as a legal entity or in the former partners as joint owners in proportion to the shares to which each might be entitled after liquidation, complainant had an equitable lien upon all the American assets to secure the distributive

> share which might be due him after liquidation and also to secure the payment of partnership debts.
>
> Under the partnership articles the complainant is entitled upon distribution to have repaid him out of the assets of the partnership, the amount of his capital investment with interest and also 20% of the net profits which had been earned by the partnership, and he is liable for 20% of all losses."

Of course the argument by Mayer's counsel rests wholly upon the strained interpretation of a single word, and is contrary both to the fair interpretation of the entire finding and the well settled principles of partnership law. The words "what was due him from the partnership" must be read in conjunction with the words that follow, namely, "on an accounting of the affairs of the partnership." The use of the phrase was unhappy in view of the error it has occasioned.

The court's opinion in the former suit did not intend to say, we are sure, that anything was actually due Mayer on April 6, 1917, in view of the fact that the court expressly found that, on the state of the evidence then existing, it was unable to state an accounting, and that Mayer's lien was only for what was due him from the partnership on an accounting. This appears more fully from a consideration of the following language in Judge Bingham's opinion (*Mayer* v. *Garvan*, 270 Fed. 229):

> "The liabilities of the firm so far as the evidence discloses cannot be ascertained and the value of the German mark on the date of the dissolution of the firm, *or any subsequent date as of which an accounting should be stated* has not been presented." (Italics ours.)

Counsel for Richard Mayer also relies upon the following language used by the court in *Clay* v. *Field*, 138 U. S. 464, 473, as giving Richard Mayer the right to elect whether or not to become a creditor of the partnership at the time of the dissolution:

> "The general principle of law undoubtedly is, that on the dissolution of the firm by the death of one of the

partners, it is the survivor's duty to settle up the partnership affairs within a reasonable time, and pay over to the representatives of the deceased partner the amount due to them; and if he takes the responsibility of continuing the business of the firm, and using the property of the partnership, he becomes liable for losses that may occur, and it is in the option of the representatives of the deceased partner either to insist upon a division of the profits which may be made in thus carrying on the business, or upon being paid the amount of the deceased's share in the capital, with lawful interest thereon, after deducting his indebtedness to the firm. (See Lindley on Part. Book III, Chapter 10, pages 976 to 1046, 1047, 4th Ed.) The application of the rule in this case would, strictly speaking, entitle the representatives of D. I. Field (the deceased partner) to call for an account of his share in the capital of the concern *at the time of his death*, with lawful interest". (Italics not in original.)

The foregoing language used by the court has reference to an outgoing partner's right of election between profits and interest as compensation for the use of his capital in a continuing business after the dissolution. It is not authority for the proposition that Richard Mayer became a creditor of the partnership on April 6, 1917.

Dissolution does not create a debtor and creditor relationship among the partners.

It is well established law that the dissolution of a partnership does not effect a change of relationship from that of co-partners to that of debtors and creditors. Mr. Justice Story in his famous work on Partnership (7th edition), § 221, says that

"until all the partnership concerns are ascertained and adjusted, it is impossible to know whether a particular partner be a debtor or a creditor of the firm; for although he may have advanced large sums of money on account thereof, he may be indebted to the firm in a much larger amount. Now the settlement of all the partnership concerns is ordinarily, during the continuance of the part-

> nership, unattainable at law; and even in equity it is not ordinarily enforced, except upon a dissolution of the partnership".

The act of dissolution, while terminating the partnership for certain purposes, is for other purposes, merely the initial step in a program which contemplates as its ultimate object the determination and payment to each partner of his share in the net assets of the firm. We quote again from Mr. Justice Story (§ 325), who says:

> "On the other hand, notwithstanding the dissolution of the partnership, there still remain certain rights, duties, powers, authorities, and relations between them which the law recognizes and supports, because they are, or may be, indispensable to the complete arrangement and final settlement of the affairs of the partnership; and, therefore, in a qualified and limited sense, the partnership may be said for those purposes to continue between the parties until such arrangement and settlement take place. Indeed, as has been well said by a learned author on this subject, from the very nature of the partnership, engagements may be contracted which cannot be fulfilled during its existence, exposed as it is to sudden and arbitrary terminations; and the consequence, therefore, must be, that, for the purpose of making good outstanding engagements, of taking and settling all the accounts, and converting all the property, means, and assets of the partner, existing at the time of the dissolution, as beneficially as may be for the benefit of all who were partners, according to their respective shares and proportions, the legal interest must subsist, although, for all other purposes, the partnership is actually determined."

Substantially the same language was used by Lord Elden in *Crawshay* v. *Collins,* 15 Ves. 226.

See also:

> Story on Partnership, §§ 326-328; 344.
> 30 Cyc. 659 *et seq.*
> *Freeman* v. *Freeman,* 136 Mass. 260, 263, 264.

In Parsons on Partnership (4th Edition), § 286, p. 376, it is said:

> "In the first place, a mere dissolution has no effect whatever on the property of the partners, or their interest in the joint stock or joint rights, or their power over old or existing debts due to them or due from them; excepting always that they have all entirely lost the power of acting for each other, or binding each other, any further than all joint debtors or joint creditors may do."

Judge Story in discussing advances made by partners to the firm emphasizes the distinction between moneys advanced for account of co-partners and the ordinary relationship of debtor and creditor. He says at § 348-*a*:

> "If any partner has made advances to the firm, and others have received advances from it, these *do not constitute debts strictly speaking until the concern is wound up but only are items in the account* between the partners." (Italics ours.)

And he cites the case of *Richardson* v. *Bank of England*, 4 Myl. & C. 165, 172. On this occasion Lord Cottenham said, speaking of debtor and creditor partners:

> "But though these terms 'creditor' and 'debtor' are so used and sufficiently explain what is meant by the use of them, nothing can be more inconsistent with the known law of partnership than to consider the situation of either party as in any degree resembling the situation of those whose appellation has been so borrowed. The supposed creditor has no means of compelling payment of his debt; and the supposed debtor is liable to no process either at law or in equity, assuming always that no separate security has been taken or given. The supposed creditor's debt is due from the firm of which he is a partner; and the supposed debtor owes the money to himself in common with his partners; and, pending the partnership, equity will not interfere to set right the balance between the partners. Indeed, it could not do so with effect, inasmuch as immediately after a decree has enforced payment of the money supposed to be due,

> the party paying might in exercise of his power of a partner, repossess himself of the same sum. But if, pending the partnership, neither law or equity will treat such advances as debts, will it be so after the partnership has determined, before any settlement of account and before the payment of the joint debts or the realization of the partnership estate? Nothing is more settled than that under such circumstances what may have been advanced by one partner or received by another, can only constitute items in the account. There may be losses, the particular partner's share of which may be more than sufficient to exhaust that which he has advanced, or profits more than equal to what the other has received; and until the amount of such profit and loss be ascertained by the winding up of the partnership affairs, neither party has any remedy against or liability to, the other for payment from one to the other of what may have been advanced or received."

See also *Arnold* v. *Arnold*, 90 N. Y. 580, 583, the leading case in the State of New York.

As Lord Cottenham indicated in *Richardson* v. *Bank of England, supra*, the use of the expression "debtor" and creditors" in defining the relationship of partners to each other is inaccurate and erroneous. Its occasional or possibly usual use in trade circles and for want of a more accurate lay expression is explained by Lindley (Partnership, p. 432) as follows:

> "It is usual among mercantile men to treat all the accounts of a partnership as accounts of the firm and to deal with the accounts of individual partners as if they were simply debtors or creditors of the firm."

And he says that this is done for bookkeeping purposes only,

> "Each partner being thus treated as an ordinary creditor and debtor in respect of what he brings in and what he draws out. The balance standing to his credit or to his debit, as the case may be, in the private ledger, shows how his account with the firm stands. Upon payment of that balance by the firm to him, if the bal-

ance is in his favor, or by him to the firm if the balance is against him, his account with the firm is closed and settled."

Lindley distinctly points out (p. 436):

"but it must not be imagined that the balances in question are debts owing to each partner by his co-partners."

It is said that

"The reason why one partner cannot sue another at law is that nothing is due from one to the other on account of the partnership transactions until the final settlement of the partnership accounts which can be compelled only in chancery."

Pote v. *Phillips,* Fed. Cas. No. 11316.

See also:

Lamalere v. *Caze,* Fed. Cas. No. 8003;
Goldsboro v. *McWilliams,* Fed. Cas. No. 5518;
Gommersall v. *Gommersall,* 96 Mass. 60;
The Emmaus, 51 L. J. 7 (Adm. Ct.) *29 Harvard Law Review* 795.

An actual settlement must be made and a balance struck by the act of all partners before any of them can be sued in an action of assumpsit. It is not sufficient that the balance may be adduced from the partnership books.

Anderson v. *Allen,* 9 S. & R. 241.

A debt has been defined as a sum of money due by certain and express agreement where the amount is fixed and specific and does not depend on any future valuation to settle it.

Milliken v. *Slote,* 1 Nev. 585, 590; quoting Bouvier's definition.

Powell v. *Railway Company,* 36 Fed. 726, 730, quoting 3 Blackstone Com. 154.

In *Martin* v. *Hobson,* L. R. 8 Ch. 401, it was held that the phrase "money due" did not include an unascertained share in certain partnership assets.

See also

20 Amer. and Eng. Encycl. 841.

No principle of partnership law is better settled than that interest does not run on a partner's distributive share until after a balance is struck on an accounting, and the Court below recognized that principle in disallowing Richard Mayer's claim for interest. In stating the reason for disallowing his claim for interest, however, the District Court coupled the statement that the German partners could not determine the distributive share of Mayer in the firm assets with the further statement that, if they had been able to do so, they could not *pay* any part of his share to him while a state of war continued, the Court saying (R. 74):

> "Interest upon the partner's distributive share cannot be allowed until it has been determined. Not only because the distributive share of Mayer had not been determined, but because, after the outbreak of the war payment to him would have been illegal, I find the German partners are not liable for payment of interest on Mayer's distributive share."

The act of dissolution does not operate as a distribution or allocation of partnership assets. Some agent or agency—normally the surviving partners themselves or one designated by them as liquidating partner—must administer the assets and liabilities.

Moore v. *Huntington*, 17 Wall. 417, 423.

And until this is done and an accounting had between the partners and a balance struck on that accounting the partnership property remains partnership property and may not become the individual property of any of the partners merely by conversion.

Story on Partnership, § 351;
Cramer v. *United States*, 7 Ct. Cl. 302;
Grant v. *Fletcher*, 283 Fed. 243, 259;
Zimmerman v. *Harding*, 227 U. S. 489, 494.

During such period of administration the partnership entity—the estate in process of administration—may be committed to the tender mercies of a court of bankruptcy.

In re Coe, 157 Fed. 308;
In re Stein & Co., 127 Fed. 547, 549

The assets and liabilities of the partnership must be ascertained as of April 6, 1917, solely for the purpose of limiting Richard Mayer's liability in a continuing business, but not to effect distribution or division of the partnership assets as of that date.

If the administration of the estate of the dissolved partnership must precede the determination of the balance due each partner, what then, it may be asked, is the significance of the phrase frequently used in reference to partnership accounting, that the accounting must be stated as of the date of dissolution?

By the phrase "stating the account as of the date of dissolution" no more is meant than that the assets and liabilities of the firm must be determined and identified as of that date, so that no partner's share may be jeopardized by subsequent transactions not connected with the winding up of the partnership business. In other words the assets and liabilities should be inventoried as of the date of dissolution, so that if there be any subsequent shrinkage of assets the responsibility for such loss may be fixed, and if such loss occur through the unauthorized and unlawful act of an individual partner, the partner so responsible may be charged with such loss upon final accounting and distribution.

In *Moore* v. *Huntington*, 17 Wall. 417, it is said:

> "It was the legal right of defendants, as surviving partners, to close out the concern, collect and dispose of its choses in action, and its property, pay what it owed, and then pay over to the plaintiff her just share of what was left. They were not bound to become purchasers of

> the defendant's interest at a valuation. But they were bound to use reasonable diligence and care in closing out the business, and in taking care of the decedent's interest. If they used such care and diligence they were only liable for what was realized in their hands when it was done. If they did not they are liable for what might have been realized by the use of such care and diligence."

To hold that the German partners must account to Richard Mayer "as of April 6, 1917, for Mayer's share at M. 2,097,223.72", in the sense that the mark amount which in this accounting may be ascertained as the distributive share which would have accrued in Richard Mayer's favor on April 6, 1917, *had an accounting taken place on that date*, without taking into consideration subsequent losses not due to the fault of the German partners, is to endow Richard Mayer's right to a share on partnership distribution with the qualities that inhere in a debt as though the debt had accrued in his favor at the time of dissolution.

In the case at bar it is undisputed that no loss or diminution of the German assets has resulted from the carrying on of the business by the German partners, nor were the liabilities increased thereby. Accordingly the trial Court found in its opinion (R. 69):

> "and whether the German partners held Mayer's share of the European assets as trustees or liquidating partners or whether they went on with the business as a going concern in Germany, using his share of the assets and expecting to account to him at the close of the war as a partner, is immaterial."

There is no liability for failure to liquidate where there is no loss. And where the loss is not attributable to the fault or neglect of the partners who fail to liquidate but continue the business after dissolution the loss must be borne by all the partners alike.

Clay v. *Field*, 138 U. S. 464, 473.

The failure of the Geerman partners to liquidate resulted in no loss; in fact there was an enormous appreciation prior

to the accounting in the value of the German assets, measured in the currency of the country in which those assets were located. The stating of an account as of April 6, 1917, therefore, results in the establishment of no liability upon the German partners for losses subsequent thereto.

Dissolution of the partnership by war does not invest partners with the rights of creditors. The partnership property continues to remain the property of all the partners, though the interest or equity of the alien partners, determined upon an accounting, may be seized by the local government or vested in some public officer thereof, such as the Alien Property Custodian. Though intercourse between the enemy partners be prohibited on the outbreak of the war and the partnership dissolved, the effect is no greater than that which occurs where a partnership is dissolved by mutual agreement of the partners.

See:

Buchanan v. *Curry*, 19 Johns. (N. Y.) 137;
Douglas v. *United States*, 14 Ct. Cl. 1;
Cramer v. *United States*, 7 Ct. Cl. 302, 304;
Stevenson & Sons, Ltd. v. *Aktiengesellschaft, etc.*, (1918) A. C. 239;
Clay v. *Field*, 138 U. S. 464;
30 *Cyc.* 655.

In the language of Chancellor Kent, in the leading case of *Griswold* v. *Waddington*, 16 Johns. 438:

> "the parties were still partners as to those goods which had been actually purchased by them before the war; and the parties, as partners, were bound to account to each other for the proceeds of these goods, and equally bound as partners to pay for them, if not already paid for. A dissolution of partnership only has respect to the future. The parties remain bound for all antecedent engagements. The partnership may be said to continue as to everything that is past and until all pre-existing matters are wound up and settled."

This doctrine is analogous to that which permits a resident agent in enemy territory to collect though not to remit assets.

U. S. v. *Grossmayer*, 9 Wall. 72;
Insurance Company v. *Davis*, 95 U. S. 425.

At the outbreak of the war on April 6, 1917, the assets of the partnership of Reis & Co. consisted of real property in Germany and merchandise, securities, accounts and bills receivable, etc., in the United States and Germany; the American assets having a value in excess of $900,000 (R. 31) and the German assets a value in excess of marks 15,000,000 (R. 85). The net worth of the partnership was not, of course, represented by these figures, nor did these figures represent the amount to become available for distribution among the partners. There were partnership liabilities to be met; the assets were subject to diminution or loss in the liquidation thereof. Depreciation in securities, inventory depreciation, credit losses, fire and other casualties are normal experiences in the life of going concerns and these misfortunes are not unknown in the administration of estates.

No accounting and determination of the distributive shares of the partners could be had until the trial.

Upon the outbreak of the war all intercourse between Mayer and the German partners became illegal, both at common law and under Section two of the Trading with the Enemy Act and no accounting could be had or attempted until after the termination of the war on July 2, 1921.

United States v. *Grossmayer*, 9 Wall. 72;
Act of Cong., October 6, 1917, c. 106, 40 Stat. 411.

After the termination of the war Richard Mayer was engaged in pressing a claim against the Alien Property Custodian and in asserting ownership of the American assets under

an alleged dissolution agreement determined by the court in *Mayer* v. *Garran*, 278 Fed. 27, to be invalid, and he was in no mood for an accounting, and it was not until May, 1922, following that decision, that he made any and then only an abortive attempt to account.

His "*nulla bona*" return was rejected by the Alien Property Custodian and became the occasion for the present suit for an accounting, to which the German partners were made parties defendant. On the trial thereof, in March, 1923, for the first time was there presented evidence by the parties to support an accounting and a determination of the surplus of the partnership available for distribution to the respective partners.

SECOND.

The account of the German partners shows that they have accounted for everything they received in the currency in which they received it. The loss which has been sustained by the partnership arises exclusively from the depreciation of that currency.

On December 31, 1916, all the German assets had a value of marks 15,282,170.55, exclusive of liabilities which amounted to approximately marks 4,000,000 (R. 85). The value of all the German assets on April 6, 1917, is not stated inasmuch as no inventory was taken on that day, but the uncontradicted testimony (R. 85) shows, that the book values of the assets were practically the same on April 6, 1917, as on December 31, 1916, so that we may consider the assets on hand as of December 31, 1916, and see how they are treated in the account of the German partners.

Edwin Reis testified that, in addition to the merchandise, the accounts receivable, the investments and notes receivable

were quick assets which were liquidated within the year 1917 (R. 85). The cash on hand was marks 5,811.29.

The German partners charged themselves with the full amount of the assets on hand December 31, 1916, towit: Marks 15,282,170.55. If they had undertaken the technical process of liquidation, and if, without any fault on their part, merchandise on hand say at Friedrichsfeld which amounted to marks 1,371,553.63 (R. 49) had been destroyed by fire, the German partners would not be responsible for that loss and would be entitled to credit themselves with the loss, leaving the net assets chargeable to them at marks 13,910,616.92. If they did not go through the technical process of liquidation, but continued to use the assets in a going business, applying the rule that the failure to liquidate makes partners so failing to liquidate chargeable with the value of the assets at the time of dissolution and renders them liable to bear the entire burden of the subsequent loss of the assets, the German partners would have to bear the entire loss occasioned by a fire without any proportionate burden being placed on Richard Mayer. In other words, Mayer would still be entitled to his 20% of marks 15,282,170.55, for which the German partners have to account, less his proportionate share of the liabilities, although they might have had, as a result of the fire, only marks 13,910,616.92 in their possession. And this would be just.

There has been, however, no loss as a result of the failure to liquidate assets, and the record does not indicate that any profits were made in excess of those already credited to Richard Mayer on this accounting. The partnership books and the testimony conclusively prove that the marks 15,282,-170.55 of assets were all converted into cash by the German partners with the exception of the Friedrichsfeld plant which was unsold at the time of trial. The merchandise on hand was sold for its full value. The cash on hand was, of course, retained as cash and accounts receivable were collected in full, and the Herzberg and Franzenthal plants, which, together with the Friedrichsfeld plant, constituted all the

fixed assets of the firm, were sold for their full value. The Friedrichsfeld plant alone remained unsold. All the partners have agreed on the value with which the German partners are to charge themselves on this accounting for the Friedrichsfeld plant. Thus the German partners, in the normal course of business, and by reason of the sale of the Herzberg and Franzenthal plants, at favorable prices, received for all the German assets exclusive of the Friedrichsfeld plant, the sum of marks 16,133,678.89, although the value of these assets as charged to them at dissolution was only marks 14,994,678.89, the increase of marks 1,139,000 being due to the sale of the Herzberg and Franzenthal plants at figures far in excess of their book values, which again is accounted for by the constantly diminishing purchase power of the mark. In addition to that sum realized from the sale of all the assets except the Friedrichsfeld plant, there should be added the sum of approximately marks 81,000,000, the value of the Friedrichsfeld plant on March 27, 1923 (see Defendant's Exhibit XIII, R. 146), which is conceded by Richard Mayer as the correct value of the Friedrichsfeld plant, if that in any way becomes material on this accounting. The difference between marks 81,000,000 and marks 287,491.66, the value of the Friedrichsfeld plant at the time of dissolution, is also accounted for by the depreciation of the mark. Thus the German partners must be held accountable for all the German assets at marks 97,133,678.89. This sum does not include profits that were made by the use of that capital after dissolution.

Edwin Reis testified that Richard Mayer's share, including such profits as of the date of trial would amount to marks 27,000,000 (R. 84).

It is obvious that if all the German assets of the partnership had been liquidated immediately upon the outbreak of the war, the partnership assets would have been converted from merchandise, accounts receivable, etc., into marks or mark credit balances with some banking institution, and the German partners would have realized (substituting actual

value as of April 6, 1917, for the book value of the Friedrichsfeld plant) marks 15,729,706.89; which marks or mark credit balances would have been held by the partnership until the final accounting with little augmentation in amount, except by such interest credits thereto as might have been obtained from banking depositaries. On the final accounting, therefore, the German assets would have only approximated the amount which was actually realized from the sale of all other assets except the Friedrichsfeld plant, namely marks 16,133,678.89. In other words the failure to dispose of the Friedrichsfeld plant in 1917 has resulted in the German assets on the accounting having a value in marks of five or six times the value which the partnership assets would have had if all assets had been liquidated at the time of dissolution Richard Mayer has therefore obtained a substantial benefit through the failure of the German partners to liquidate all the assets.

The German partners are obviously not responsible for the depreciation of the German mark, nor for the fact that the German assets upon liquidation and upon an accounting must be converted into or valued in marks.

That the marks have depreciated in purchasing power and in their relation to the United States dollar, cannot, of course, be denied. It is an historical fact, of which Judge Johnson took notice (R. 70) that after the outbreak of the world war in 1914, Germany issued huge volumes of fiat money in the form of paper marks, and so long as the credit of the government was good these paper marks were accepted everywhere in Germany at their full nominal value. As a matter of fact there was no choice of accepting them or rejecting them in preference to gold marks or metallic marks, for an act was passed on the 4th day of August, 1914, making paper marks legal tender. This has been testified to by Edwin Reis, and a copy of the act has been introduced in evidence as Plaintiff's Exhibit 2 (R. 86, 97, 98).

As the war progressed, increasing large quantities of these paper marks were printed and put in circulation by the Ger-

man government. Contemporaneous with the passage of the Legal Tender Act, a law was enacted which provided that paper marks need not be redeemed by the Imperial Treasury or by the Reichsbank (R. 97, 98). The paper marks then went the course of all fiat money unsupported by gold reserve. Their purchasing power constantly diminished, while their position in the commerce of the nation became paramount.

Unfortunately the assets of the German partnership could not be exported and their conversion and valuation could only be had in depreciated paper marks. The German partners committed no breach of trust or duty in accepting paper marks. They were bound to do so. The debtors of the partnership were permitted to pay the obligations to the partnership in such depreciated currency and the partnership was bound to accept it.

In this country it has been held that upon an accounting an executor cannot be surcharged for having accepted depreciated greenbacks at their nominal value in payment of debts owing to the estate, where he was bound to accept the same under the Legal Tender Acts.

Jackson v. *Chase*, 98 Mass. 286.

Similarly in the case of *McNair* v. *Ragland*, 16 N. C. (1 Dev. Eq.) 520 it was held that a partner collecting in depreciated continental currency debts due the firm, was obliged to account only for the currency he actually received.

Money is, in the last analysis, merely a commodity, and the value of various currencies is subject to the operation of economic laws.

The experience of European nations since the outbreak of the world war and the experience in this country in the past indicates how unstable currencies may be or become, and we have yet to find a case which holds that partnership losses due to depreciation in currency may be saddled upon the liquidating partners or upon those partners who are so unfortunate as to reside in the country whose currency is debased or depreciated.

THIRD.

The Court erred in translating Mayer's distributive share computed in marks into dollars at the par of exchange ($.2382) for the purpose of rendering a decree in dollars.

Despite the fact that the uncontradicted evidence in this case showed that the German partners had received paper marks for the sale of the German assets and that the value of the only remaining unsold asset, to wit: the Friedrichsfeld plant, had been testified to, at the trial, in paper marks, the trial court proceeded to convert the same into dollars by the use of the par of exchange as a medium of comparison. He states in his opinion (R. 70):

> "It is a matter of general knowledge that, as a result of the outcome of the war and economic conditions existing in Germany and the issue of huge volume of paper marks which do not rest upon any gold standard, there has been a tremendous shrinkage in the value of the German mark as expressed in the United States monetary unit of value. Upon March 30, 1917, the nearest date to April 6, 1917, when the rate of exchange was quoted, the value of the German mark in the currency of the United States was about 18 cents. After the declaration of war there was of course no rate of exchange between the United States and Germany and none was quoted until some time in 1919, when the first quotation of the value of the German mark in the currency of the United States was 7⅞ cents. Upon July 2, 1921, when the state of war was declared to be at an end by the Act of Congress, the German mark had declined to 1.35 cents; and at the time of the beginning of the hearing before me, March 28, 1923, its value was .0048 of a cent, and it is well known that since that time the rate of exchange has further declined. There is no evidence to show the domestic value of the German mark nor whether the decline in the rate of exchange, as shown in this country, correctly expresses the decline in its value in Germany."

Notwithstanding the depreciation of the mark and its small value in dollars, the District Court resorted to the par of exchange in effecting conversion of marks into dollars. It said (R. 72, 73):

> "The decree in this case must be in terms of American dollars. The American assets are measured in terms of the American gold dollar containing gold of a standard weight and fineness. The German assets should be measured by the same yard stick; that is, by the gold mark, which is equivalent to .2382 of a cent of the money of the United States, both based upon a gold standard.
>
> Counsel have cited in argument cases to show that the rate of exchange between two countries at the time of the breach of the contract is the rule adopted in English courts when judgment is to be rendered there for a debt payable in another country; and have also cited American authorities which hold that the rate of exchange at the time of the trial or of the judgment should govern. There are, however, respectable authorities in the United States which hold that in an action for money due and payable in a foreign country, the rate of exchange should not be taken into consideration in computing the sum due in American money; but that the par of exchange should govern.
>
> *Adams* v. *Cordis*, 8 Pick. 260;
> *Alcock* v. *Hopkins*, 6 Cush. 484;
> *Lodge* v. *Spooner*, 8 Gray 166;
> *Commonwealth* v. *Haupt*, 10 Allen 38;
> *Burgess* v. *Alliance Ins. Co.*, 10 Allen 221;
> *Swanson* v. *Cooke*, 45 Bar. 387;
> *Rice* v. *Ontario S. B. Co.*, 56 Barb. 387;
> *Martin* v. *Franklin*, 4 Johns. 124;
> *Skofield* v. *Day*, 20 Johns. 102;
> *Hussey* v. *Farlow*, 9 Allen 263;
> *Reiser* v. *Parker*, 1 Lowell 262.
>
> Translating the distributive share of Richard Mayer into European assets, M 2,097,223.72 into dollars at .2382 to the mark would make $499,558.69."

This action of the District Court in using the theoretical par of exchange was approved by the Circuit Court of Appeals (R. 152, 153).

We have previously shown that upon the proclamation in German, immediately after the outbreak of the World War, of Legal Tender Acts, the inevitable result followed that gold was entirely withdrawn from circulation in Germany, a common occurrence observed in connection with paper currency made compulsory by Legal Tender Acts and generally referred to in text books on economics as Gresham's Law, in the light of which the testimony of Edwin Reis that, since August 1914, there have been no gold marks in circulation required no further corroboration.

The court by judicial decree has in effect confiscated the German partners' share in the American assets, which, under the terms of the partnership agreement, amounted to 80% of the total net profits, by giving Richard Mayer's share in the German assets a fictitious value not supported by any evidence and deducting that fictitious value from the American assets in his possession.

"Par of exchange" has been defined as an amount stated in one currency which is an equivalent for the same value expressed in another; it is a literal translation of the language of value in one country or currency into that of equal value in another. The true par of exchange between two countries is the equivalent of a certain amount of the currency of one in the currency of the other, supposing the currency of both to be at the precise weight and purity fixed by their respective mints; or in other words, it is the amount which the standard coin of either country would produce, when coined at the mint of the other.

Sutherland on Damages, 4th Ed., Sec. 212.

The par of exchange is an ideal, and whenever a currency becomes depreciated by either the issuance of debased metallic coinage or paper money not representing gold or silver in the treasury, the nominal or ideal par of exchange ceases to represent the true relation between the currencies. In order to find equivalents, we must then resort to the *real par*.

See

Hargrave v. *Creighton*, 1 Woods, 489, Fed. Cas. No. 6064;

Robinson v. *Hall*, 28 How. Prac. (N. Y.) 342;

U. S. v. *American Gold Coin*, 24 Fed. Cas. 780 (No. 14439).

Both of the last-mentioned cases involved depreciated greenbacks.

In *Thorington* v. *Smith*, 8 Wall. 1, the court characterizes as hardly less than absurd a statement that Confederate notes must be regarded as identical in kind and value as the dollars which constitute the money of the United States.

The decisions cited by the District and Circuit Court of Appeals to the effect that the nominal par should be used in converting marks into dollars involved debt claims and are predicated upon the decisions in the cases of *Martin* v. *Franklin*, 4 Johns, 124, and *Adams* v. *Cordis*, 8 Pick. 260. The rule adopted in these cases as regards the application of the par of exchange is by no means uniform (see Story, Conflict of Laws, 8th Ed., p. 426 *et seq.*) and the reasoning also which led to the adoption of that rule in the several states in which it has been adopted has been often criticized. The rule certainly has no application to the case at bar.

It is interesting to note that the decisions relied upon by the District Court and the Circuit Court of Appeals in translating marks into dollars at a theoretical par of exchange are of ancient vintage, and generally involve situations where the United States dollar was at a discount or the English pound at a premium in the exchange market, and off the record the decisions may be attributed to a certain provincial desire to announce or maintain the principle that our United States money was as good as any other money. In the green back cases and following the Legal Tender Acts, this court recognized that there may exist depreciation of currency, even that of the United States.

The world war has probably called to the attention of the public generally, as emphatically as possible, the prin-

ciples of Gresham's law, and has developed a number of decisions as to the rule to be applied in translating foreign currency into United States dollars.

See

Hoppe v. *Russo-Asiatic Bank*, 235 N. Y. 37;
Simonoff v. *Bank*, 279 Ill. 248;
Katcher v. *American Express Co.*, 94 N. J. L. 165;
S. S. "Celia" v. *S. S. "Volturno"* (1921) L. R. 2 App. Cas. 544;
Di Ferdinando v. *Simon Schmidts & Co.* (1920), 3 K. B. D. 409.

In a recent decision of this court, in *Guinness et al.* v. *Hicks*, Nos. 80 and 81, October Term, 1925, this court held that where an obligation payable in foreign currency had matured or existed prior to the outbreak of the war, the amount to be paid in dollars was to be calculated at the rate of exchange existing at the time of the breach of the obligation or on the date when the money became due, and it is interesting to note in the opinion that the value of the mark in dollars in December, 1916, was approximately 17½ cents.

The decision in the *Guinness* case clearly indicates that where there is evidence of the exchange value of the German mark, the court is not warranted in applying the par of exchange, and therefore the doctrine of *Birge Forbes Company* v. *Heye*, 251 U. S. 317,321 (where this court held that the lower court was warranted in taking the value of the German mark at par in the *absence* of evidence that it had depreciated at the time of plaintiff's payments), does not apply. Wherever the court has before it evidence as to the proper rate of exchange it has applied that rate, whether the conversion be of marks

Miller v. *Humphrey*, 7 Fed (2nd) 330

or francs

The Hurona, 268 Fed. 910;
Page v. *Levenson*, 281 Fed. 555;
Dante v. *Minnigio*, 298 Fed. 845

or florins

Wichita Mill, etc., v. *Naamlooze, etc.*, 3 Fed. (2nd) 931

or pounds sterling.

The Verdi, 268 Fed. 908.

That the nominal par of exchange may not always express the true or real par of exchange is recognized even in connection with the valuation of foreign currencies for custom house purposes, although a definite par of exchange for the standard coins in circulation of the various nations of the world is estimated quarterly by the Director of the Mint and proclaimed by the Secretary of the Treasury pursuant to statute (28 Stat. L. 552).

See

Cramer v. *Arthur*, 102 U. S. 612;
Grant v. *Maxwell*, Fed. Cas. No. 5699.

The law applicable to the valuation of foreign currencies for customs purposes, it is true, does not afford a sufficient guide for a court of law or equity in solving the problem of translating values of foreign currencies into American dollars, excepting in so far as it shows that even in connection with customs valuations, requiring uniformity in the application of the law, a marked depreciation in the currency from the par of exchange must be taken into consideration. A court, in the exercise of its judicial function, must look to the specific facts of each case, and, where the par of exchange of any two currencies has ceased to express the true relation between them and has become purely nominal, it should make its valuation on the basis of the true or real par.

Where there is no established par, or where the nominal par value has ceased to be the true par because of a depreciation of the currency, the rate of exchange must of necessity be used as the nearest approximation of what the true par would be. (Story on Conflict of Laws, 8th Ed., p. 426).

As the Trial Court itself found (R. 70) the value of the mark, at exchange, in March, 1923, was .0048 of one cent,

and its value on July 2, 1921, on the termination of the war, when intercourse with German nationals was again permitted, was only 1.35 cents per mark. While recognizing the low value of the mark in exchange, and the tremendous depreciation of the mark, the court attempts to avoid giving effect to such recognition by stating that

> "There is no evidence to show the domestic value of the German mark, nor whether the decline in the rate of exchange as shown in this country correctly expresses the decline in its value in Germany."

The rate of exchange is of course the only proper and effective method of determining the value of the money of one country or nation in that of another, or of measuring property or other values in different currencies. The whole world was aware of the decline of the purchasing power of the mark—not only abroad, but in Germany. The district and circuit court of appeals ignored an economic situation familiar to every "doughboy" in the American Army of Occupation.

The court did not need to look beyond the record of this case, even if it could properly decline to consider exchange rates, to obtain some knowledge of the domestic or the intrinsic value of the mark. The tremendous appreciation in value in marks of the Friedrichsfeld plant, namely, from a book value of 287,489.66 marks and an actual value of 635,028 marks on April 6, 1917, to a value in marks of 81,000,000 marks at the time of trial, is in itself sufficient and conclusive evidence of the tremendous decline in the intrinsic and domestic value of the mark.

To employ the par of exchange to determine the dollar equivalent of Richard Mayer's distributive share of the German assets, as the District and Circuit Court of Appeals did, is to allocate to Richard Mayer, whose original investment amounted to only 7% of the aggregate capital of the firm, and whose share in the profits was only 20% of the total profits, substantially the entire wealth of the partnership. The German partners are in effect required to pay

him out on the basis of gold while they are left with the worthless paper marks as the bulk of their share.

Normally, and but for the intervention of war and of the Trading with the Enemy Act, with its sequestration of the property of German nationals in the United States, the partnership accounting would have been had at the head office at Friedrichsfeld, and in determining Richard Mayer's distributive share the assets in the United States would have been converted into marks at the prevailing rate of exchange, making many millions or billions of marks. Richard Mayer's distributive share would have been expressed and paid in marks, and with marks he would have bought exchange on New York or Boston to bring back to this country the proceeds eventually resulting to him upon the ultimate acts of winding up the partnership. If the liquidation and accounting had been effected in this way, Richard Mayer would have received the same amount that the defendant German partners and the Alien Property Custodian now claims he is entitled to receive.

FOURTH.

The Court erred in holding and ruling that the sum of marks 956,814.31 set aside by the German defendants for reserves should not be included among the liabilities, to the payment of which the defendant, Richard Mayer's share should contribute. 500,000 marks of said reserves constituted a partnership liability.

Edwin Reis testified regarding the reserves set up by the firm, prior to the dissolution, substantially as follows (R. 87):

(1) 50,000 marks reserves were set up December 31st, 1916, for pensions to employees who were informed of this reserve. The firm thereafter considered it a debt.

(2) 500,000 marks reserves for losses on contracts; 200,000 marks of this fund were set up at the end of 1916, the other 300,000 marks were set up some time before. This reserve was not a general one against future possible contract liabilities, but was set up against certain specific contracts to furnish merchandise which the firm had undertaken at low prices before the war, and which had to be fulfilled after the war. At the time the reserves were set up the selling price was already much less than the cost to the firm. It was against these losses in fulfilling orders that they were obliged to set up this reserve. The reserve was exhausted during the years 1918, 1919 and 1920.

(3) 300,000 marks reserves against losses which would occur in the transition period after the war. It was a reserve to meet expected changes in the value occurring in the transition period after the war. It was a reserve that was allowed to be set up by the German law. In the opinion of the firm and their chartered accountants it was necessary to make these reserves, and they were later found to be too small.

The Court below has disallowed a credit claim of the German partners for all three reserves, making no distinction between the nature of them. The first and the third reserves above enumerated might well be regarded as properly chargeable to the German partners alone, since they were set up to meet contingencies arising strictly in connection with a continuing business in which Mayer's liability, after the dissolution by war, was limited. The 50,000 marks reserves for pensions to employees was made to meet payments in the nature of gifts and gratuities.

The 300,000 marks reserves against losses in the transition period after the war likewise must be charged to the German partners on a partnership accounting. In view of the fact that they provided against losses to be sustained, not merely in the performance of old contracts, existing prior to the dissolution, but to meet emergencies in a business continuing after dissolution, in which Mayer's liability as against incurring new obligations was limited. He was

entitled to share in all profits made, but he did not have to contribute to losses due to a continuance of the business. For any such newly incurred liabilities the German partners alone were responsible. After the profits which they made with the use of partnership assets in a continuing business were ascertained, Mayer would be entitled to share in such profits by way of compensation for the use of his capital.

The 500,000 marks reserves for losses on contracts actually existing at the time of dissolution stands on an entirely different footing. Edwin Reis expressly testified that this reserve was not a general one against future possible contract liabilities, but was set up against certain specific contracts to furnish merchandise which the firm had undertaken, before the war, at low prices, and which had to be fulfilled after the war. Insofar as 500,000 marks was actually expended in connection with the aforesaid contracts they became necessary expenditures attending the liquidation. A partner's liability after dissolution, though limited, as regards new enterprises, continues as regards the completion of unfulfilled contracts pending at the time of the dissolution. The obligations existing under the said contracts constitute actual liabilities of the firm, existing at the time of dissolution. This reserve should have, therefore, been allowed as a proper expenditure, and Richard Mayer's share in distribution should be held to contribute to said reserve. The Court below, however, held:

> "There is no testimony to show how much of this amount was paid out before April 6th, 1917, and I therefore do not include among the liabilities to the payment of which Mayer's share is to contribute the amount set aside for reserve" (R. 69).

The Court made no distinction between this reserve and the two others mentioned. As regards this reserve, it was entirely immaterial when the sum set aside was expended so long as it was actually paid out. Edwin Reis' testimony (R. 87) shows that this reserve was used up in 1918, 1919 and 1920.

FIFTH.

The Court below erred in failing to hold and rule that the claims of Ely, Leiser, Sanft and Heinstein for percentages of profits of the firm constitute a liability of the firm, and in failing to make provision in the decree for the payment of these liabilities.

Edwin Reis testified (R. 83) that certain employees were entitled to a share or percentage of the profits of the entire business of Reis & Co., including the profits of the branch houses. One of these employees was Ely, who was entitled to 5% of the profits, the agreement with him being dated May 22nd, 1913, and having been written out by Richard Mayer himself (see Defendants' Exhibit VI; R. 139).

Another employee was Mr. Leiser, who was also entitled to 5% under a written agreement, dated May 29th, 1913 which remained in force until November 30th, 1913. Thereafter the agreement was renewed. The agreement is in evidence as Defendants' Exhibit VII; (R. 141, 143).

Another employee was Adolph Sanft, who was entitled to ½% under an agreement, dated May 12th, 1913, which had no fixed duration. (See Defendants' Exhibit VIII, R. 144).

Another employee, Heinstein, was entitled to a 1% bonus on all the profits of the firm. This agreement was dated December 18th, 1910, and was for an indefinite period. (See Defendants' Exhibit IX, R. 144).

> "All four employees were in the actual employ of the firm when Richard Mayer became a partner, and continued in the employ of the company and were in such employ on April 6th, 1917 and later. Richard Mayer was fully informed about all the agreements with the employees for percentages of profits at the time he came into the partnership" (R. 84).

In addition to the four employees mentioned Jules Laible also was entitled to a percentage of the profits in both the German and the American branches of the business. He has been paid in full, excepting only for his claim for interest, which was still in litigation, the amount of $7,000 having been paid to Edward F. McClennen, as an officer of the Court, pursuant to the decree of the Court below; the Court stating:

> "If all or any part of said sum is not required to satisfy the judgment which Laible may recover, then the whole or any unexpended balance is to be paid, 80% to the Alien Property Custodian and 20% to Mayer" (R. 73).

The other employees have not brought suit upon their claims, as yet. Their claims, however, are for definite percentages of the profits aggregating in all 11½% of the profits of both the German and American branches. They have been paid their share of the profits of the German business. Their right to receive the unpaid portion of profits due them constitutes an existing liability of the firm. Insofar as that liability existed on April 6th, 1917, Richard Mayer must be required to contribute to the extent of 20% of that liability. Thereafter he was not obliged to contribute to liabilities in a continuing business. What, then, was the amount of the total maximum liability to which his share is required to contribute as of April 6th, 1917?

In view of the fact that moneys due to the aforesaid employees do not appear as liabilities of the German business in the account of the German partners, as of April 6th, 1917, the German partners must be taken to have paid all bonuses up to 1917 from the firm assets on hand. Since the last inventory including all branches of the business as of November 30th, 1913 (R. 118), and after the year 1914, the American assets were no longer carried on the books in Friedrichsfeld, and the extent of any profits made in America through the instrumentality of the Richard Mayer Company or the Anglo-American Cotton Company was, therefore, not known to the German partners. The Richard Mayer Export Department,

of course, could not have made any profit since it operated purely as a buying and selling agency for the German business.

It appears from Reis' testimony that $600,000 of the moneys in Richard Mayer's hands were kept here from remittances sent by the German partners on which it is likely that the employees claiming bonuses may have already received their percentage. The $600,000 must therefore, be eliminated from consideration as profits derived from the American business. The remaining amount in Richard Mayer's hands, which on April 6th, 1917, was concededly $310,000, consisted of profits, at least to the extent indicated on Exhibit C of Plaintiff's Exhibit V (Haskins & Sells report of Richard Mayer Company), and to the extent indicated on Exhibit B of Plaintiff's Exhibit VI (Haskins & Sells report of Anglo American Cotton Company). These profits aggregated $286,337.78 up to December 31st, 1916 (see exhibits mentioned). 11½% of said profits constitute a liability, to the payment of which the German partners must contribute 80%, and to the payment of which Richard Mayer should contribute 20%. Provision should, therefore, be made before arriving at the surplus to be surrendered to the custodian for either, the sequestering of $32,928.84, or else a provision should be incorporated in the decree requiring the parties to contribute in proportion to their respective percentages to the payment of any of the aforesaid claims.

SIXTH.

The Court below erred in disallowing the sum of 266,432.40 marks paid by the German partners for taxes and the sum of 50,400 marks paid by the German partners to Mayer's relatives at his request.

Prior to April 6, 1917, and acting under a law passed in June, 1916, the German Government levied taxes on the increase of Mayer's share of the German assets during the years 1914, 1915 and 1916 (R. 83, 87 and 154).

The tax amounted to 266,432.40 marks and was paid by the German partners in 1917 after the outbreak of the war (R. 83, 87 and 154) in order to protect Mayer's interest in the German assets which could have been seized by the German Government as a tax enforcement measure (R. 84, 154). The District Court charged Mayer with this amount (R. 71) but the Circuit Court of Appeals disallowed it as an item of charge (R. 154).

The tax was levied upon Mayer's interest in the German assets which were still in Germany and subject to distraint at the hands of the German Government and it became the duty of the German partners as fiduciaries to protect his interest. The German partners would have been chargeable on an accounting had a loss been sustained through seizure of the assets because of their failure to pay the taxes. The payment of taxes may also be justified on the theory that the German partners were acting as agents by necessity.

The District Court also allowed as a charge against Mayer the sum of 50,400 marks paid by the German partners at his direction to his relatives in Germany (R. 71). The Circuit Court of Appeals disallowed this item (R. 154). Of this sum 600 marks was paid before the declaration of war and the balance thereafter (R. 154). In 1914 when Mayer

was in Germany he requested and authorized his German partners to make these payments (R. 71, 83, 84 and 154). This authority was never revoked. The payments were in the nature of advances to Mayer and charged to his personal account.

SEVENTH.

The Court erred in ruling that the defendant Richard Mayer is accountable for the sum of only $828,072.72.

At the date of dissolution of the partnership at the outbreak of the war, it is conceded that the value of the American assets in the possession of Richard Mayer was $910,014.07. The value of the assets at the time of trial amounted to only $828,072.72, the difference between the two figures being accounted for by the total loss of the assets of the Anglo-American Cotton Co. This loss occurred partly before the assets were seized by the Custodian, and partly during the time he held them.

At the trial, counsel for the Alien Property Custodian consented to accept $828,072.72 as the correct figure for which Richard Mayer is accountable, on condition that the accounting proceed as of the time of the trial, and that all losses of partnership property be apportioned equally among all partners. Strictly speaking, Richard Mayer must be held accountable for so much of the losses that occurred in connection with the American assets as took place before they were seized by the Custodian. The German partners feel bound, however, by the waiver of any surcharge, made by counsel for the Custodian, provided that waiver be not extended beyond the scope to which it was limited by counsel for the Custodian.

EIGHTH.

The Court erred in allowing Mayer's claim for the premium paid by him in connection with the bond he furnished to the Alien Property Custodian and also in allowing counsel fees.

No credit is to be allowed Richard Mayer for any premiums paid by him in connection with the bond he furnished to the Alien Property Custodian in order to obtain a surrender of the firm property in advance of an accounting.

According to the decree of the Court in *Mayer* v. *Garran*, the Custodian, under the power vested in him with the Trading with the Enemy Act, had a right to demand some security from Richard Mayer for the payment of any surplus that might be found due on an accounting, particularly in view of Mayer's claim that he owned the partnership assets in his hands in his own right.

Richard Mayer, for the purpose of inducing the Alien Property Custodian to refrain from taking an appeal from the decision in *Mayer* v. *Garran* (*supra*), himself furnished the bond. The bond, therefore, must be deemed to have been given, not for the protection of the surplus, but rather in order to prevent the Alien Property Custodian from pressing an appeal to the Supreme Court of the United States. The expense of the bond was not incurred by Richard Mayer in the performance of his duties as a liquidating partner, for his failure to liquidate was attended by a hostile claim of ownership of the American firm property in his own right, in derogation of the rights of the German partners or the Alien Property Custodian. The bond was given distinctly for his own personal benefit in order that he might obtain possession of the assets without an appeal.

In the absence of any express agreement between Mayer and the Custodian regarding the payment of the premium, no such agreement should be implied. Richard Mayer paid the premium and received the property. It constitutes no firm obligation, and was not an expense incurred on account of liquidation.

With regard to the claim for counsel fees, the same argument holds, that Mayer's assertion of title to firm property in his own right against the Custodian was in derogation of the rights of the German partners. That expense was not incurred in connection with liquidation but rather in an effort to prevent it. In the absence of express statutory authority the German partners' share may not be required to contribute to such an expenditure. The Court said, in the case of *Grant* v. *Fletcher*, 283 Fed. 243, 274, in reference to plaintiff's claim for a special allowance to be paid by the defendants on account of expenses and attorney's fees:

> "I am satisfied that the law does not permit me to make such allowance. No extra allowance can be granted in the absence of such statutory authorization."

Mayer was a private litigant in incurring the expense of counsel. The share of the German partners should contribute only to the extent of counsel fees incurred by the Government.

NINTH.

The correct computation of Richard Mayer's distributive share of the proceeds of all the assets.

Richard Mayer is entitled to his capital contribution, and in addition thereto, to twenty per cent. of the profits. His capital contribution has been allowed him in computing his distributive share in marks of the German assets as of April 6th, 1917, which was computed as of that time for the

sole purpose of limiting any further liability on his part in a going business. The Record, at page 190, shows that this amounts to 1,905,860.87 marks. To this figure should be added the gain derived from the sale of the Herzberg and Frazenthal plants, which, carried on the books at their actual value, nevertheless were sold at a higher figure on account of the diminished purchasing power of the mark at the time of sale. Twenty per cent. of such gain amounts to 227,734.95 marks. To this should be added Mayer's share of the unsold fixed asset, the Friedrichsfeld plant, the value of which has been agreed upon in the sum of 81,000,000 marks. Its actual value on April 6th, 1917, was 635,028 marks. The difference between the actual value of the Friedrichsfeld plant on April 6th, 1917, and the agreed value of March 26th, 1923, is 80,364,972 marks. Twenty (20%) per cent. of this difference to be credited to Richard Mayer amounts to 16,072,995.40 marks (Defendant's Exhibit XIII, R. 146, 147).

The total value of Richard Mayer's share is therefore found to be 18,206,591.22 marks, exclusive of any profits earned since April 6, 1917, or of interest in lieu of profits. Inasmuch as the assets representing Mayer's capital were used by the German partners in a continuing business, and profits were earned by the use of those assets, some compensation must be awarded Mayer for that use.

Ordinarily, the value of the use of such capital would be the profits actually earned by it, as distinguished from the profits attributable to the skill of the partners using the capital. As a practical matter, it is often difficult to determine what part of the profits made, is due to the use of the capital as such, and what part to the business skill and judgment of the partners continuing the business.

In the case at bar, whatever difficulty might otherwise arise, has been eliminated because of the fact that the German partners make no claim to any profits as being attributable solely to their own skill.

Edwin Reis, at the trial, claimed "that the distributive share of Richard Mayer in the European assets of the firm,

as of March 27th, 1923, is about 27,000,000 marks" (R. 84). This figure includes the profits made from April 6th, 1917, to March 27th, 1923, the date of the giving of the testimony, the difference between that figure and 18,206,591.22 marks being Mayer's percentage of the total profits earned in that period.

If the Court should feel that profits should be awarded to Richard Mayer as compensation for the use of his capital in a going business by the German partners, his share inclusive of profits is, therefore, correctly ascertained to be 27,000,000 marks. If this Court should feel that profits should not be awarded to Richard Mayer, as compensation for the use of his capital in a going business, after the dissolution, but that interest should be awarded him, in lieu thereof, on the capital representing his share of the assets, which was used by the German partners in a going business, the amount of interest to be awarded him would be found by computing interest at the rate of six (6%) per cent. per annum for eight years on 1,905,860.87 marks, amounting to 914,813.22 marks. Adding this figure to the present value of his share, exclusive of profits, namely, 18,206,591.22, the total mark value of Mayer's distributive share of the proceeds of the German assets is found to be 19,121,404.44 marks.

By awarding Richard Mayer interest for the use of his capital in a continuing business, in lieu of profits, the Court does not in any sense attribute to Mayer's distributive share in the German assets, as of April 6th, 1917, as now ascertained, the quality of a debt, for it is not awarded as interest on a debt, but as an approximation of profits that cannot be, or have not been, accurately ascertained.

Thus, although interest does not run on a debt during war as was held in the case of *Brown* v. *Hiatts*, 15 Wall. 177, interest as here used in lieu of profits that cannot be accurately fixed, continues throughout the war and is awarded for the period covered by the war.

The use of the word "interest", here, in similar to the use of the word "profits" in the case of an employee who

receives profits, not as such, but as a measure of compensation.

That the word "interest" as here used is not true interest in the sense of interest on a debt is further shown by the fact that interest on a partner's distributive share does not begin to run until the amount of that share has been ascertained on a balance struck on a partnership accounting.

See

Dexter v. *Arnold*, Fed. Cas. No. 3855, 3 Mason, 289;
Moore v. *Rawson*, 185 Mass. 264;
Bradley v. *Bingham*, 137 Mass. 535, 546;
Crabtree v. *Randall*, 133 Mass. 552;
Miller v. *Lord*, 11 Pick. 11, 26.

The rate of exchange on the fifth day of the trial, March 30th, 1923, was testified to as $46.50 per million, or $.0000465 per mark. Translating 27,000,000 marks at this rate into dollars, Mayer's share of the proceeds of the German assets, in terms of dollars, amounts to $1,255.50. Using the figure reached by awarding him interest in lieu of profits, namely, 19,121,404.44 marks, and translating that into dollars at the same rate, the value of Mayer's share of the proceeds of the German assets is $899.15.

Either of these two amounts is to be allowed Richard Mayer as a credit on his accounting with the Alien Property Custodian for his distributive share of the proceeds of the German assets. In addition to that, Mayer is entitled to twenty per cent. of $828,072.72, the American assets, amounting to $165,614.54.

Respectfully submitted,

JOHN CALDWELL MYERS,
Attorney for Edwin Reis, *et al.*

JOHN W. DAVIS,
Of Counsel.

CONTENTS

	Page
Previous decisions in these cases	1
Grounds for the jurisdiction of this Court	2
Statement of the cases	3
The decision of the District Court	9
The decision of the Circuit Court of Appeals	12
Specifications of assigned errors intended to be urged	14
Contentions of the parties	14
Argument:	
I. THE COURT ERRED IN ADOPTING THE PAR OF EXCHANGE AS THE BASIS FOR DETERMINING IN DOLLARS THE CREDITS TO WHICH MAYER WAS ENTITLED IN RESPECT TO THE ASSETS LOCATED IN GERMANY, INSTEAD OF USING THE RATE OF EXCHANGE EXISTING AT THE TIME OF PROVING THE ACCOUNT	20
(A) THE OWNERSHIP OF THE PARTNERSHIP PROPERTY WAS NOT ALTERED PRIOR TO THE ACCOUNTING	
(1) THE DECLARATION OF WAR BETWEEN THE UNITED STATES AND GERMANY DID NOT ALTER THE OWNERSHIP OF THE PARTNERSHIP PROPERTY IN THE RESPECTIVE COUNTRIES	20
(2) THE OWNERSHIP OF THE PARTNERSHIP PROPERTY WAS NOT PRIOR TO THE ACCOUNTING ALTERED BY THE ACTS OF THE PARTIES	26
(B) THE CONDITIONS EXISTING SUBSEQUENT TO APRIL 6, 1917, AND PRIOR TO THE FILING OF THE BILL OF COMPLAINT IN THIS SUIT, RENDERED ALL LOSSES TO PARTNERSHIP ASSETS, NOT DUE TO THE NEGLECT OR FAULT OF ANY PARTNER, A PARTNERSHIP LOSS	32
(C) THE DETERMINATION, THEREFORE, OF THE RESPECTIVE RIGHTS AND INTERESTS OF THE PARTNERS MUST BE MADE IN RELATION TO THE EXTENT AND CHARACTER OF THE PARTNERSHIP ASSETS EXISTING AT THE TIME OF THE ACCOUNTING, AND THE ADJUSTMENT OF THEIR RESPECTIVE INTERESTS IN TERMS OF DOLLARS MUST BE MADE IN RELATION TO THE RATE OF EXCHANGE THEN PREVAILING	37

Page

II. The court erred in crediting Mayer with the expenses incurred by him in connection with the suit of Mayer *v.* Garvan ---- 43

III. There was no error in failing to allow Mayer interest on his distributive share ---- 47

(A) Mayer is not entitled to charge interest as against his German partners ---- 48

(B) Mayer is not entitled to interest as against the plaintiff ---- 49

Conclusion ---- 50

TABLE OF CASES

Adams v. *Cordis*, 8 Pick. 260 ---- 41

Bayly v. *Becnel*, 30 La. Ann. 75 ---- 49

Beam v. *Macomber*, 33 Mich. 127 ---- 36

Betts v. *June*, 51 N. Y. 274 ---- 36

Boddam v. *Ryley*, 1 Brown, Ch. 239 ---- 49

Bradley v. *Brigham*, 137 Mass. 545 ---- 48

Busch v. *Clark*, 127 Mass. 111 ---- 25

Case v. *Abeel*, 1 Paige 393 ---- 25

Charlton v. *Sloan*, 76 Ia. 288 ---- 36

Clay v. *Field*, 138 U. S. 464 ---- 29, 30

Coe, In re, 157 Fed. 308 ---- 26

Cooke v. *Benbow*, 68 Eng. Ch. 1 ---- 48

Cramer v. *United States*, 7 Ct. Cl. 302 ---- 23

Crane v. *French*, 1 Wend. 311 ---- 26

Daniels v. *McCormick*, 87 Wis. 255 ---- 49

Dexter v. *Arnold*, 3 Mason 289, Fed. Cas. 3855 ---- 49

Di Ferdinando v. *Simon, Smits & Co.*, (1920) 3 K. B. D. 409 ---- 42

Doner v. *Stauffer*, 1 Rawle, Penrose & Watts, 198 ---- 26

Douglas v. *United States*, 14 Ct. Cl. 1 ---- 23

Edith, The, Fed. Cas. No. 4281 ---- 34

Esposito v. *Bowden*, 7 E. & B. 763 ---- 21

Evans v. *Evans*, 9 Paige, 178 ---- 25

Ewing v. *Ewing*, L. R. 8 A. C. 822 ---- 48

Fordyce v. *Shriver*, 115 Ill. 530 ---- 36

Fox v. Hanbury, 2 Cowp. 445 ---- 26

Freeman v. *Freeman*, 136 Mass. 260 ---- 24

Gordon v. *United States*, 7 Wall. 188 ---- 50

Grant v. *Fletcher*, 283 Fed. 243 ---- 47

Grant et al. v. *Healey*, Fed. Cas. No. 5696 ---- 41

Griswold v. *Waddington*, 16 Johns 438 ---- 23

Guinness et al. v. *Hicks*, Nos. 80, 81, Oct. term, 1925 ---- 42

Hart v. *Hart*, 117 Wis. 639 ---- 48

Habricht v. *Alexander*, Fed. Cas. No. 5886 ---- 21

Hill v. *King*, 8 L. T. Rep. (N. S.) 220 ---- 48

Hoppe v. *Russo-Asiatic Bank*, 235 N. Y. 37 ---- 42

James, In re, 146 N. Y. 78 ---- 49

	Page
Johnson's Appeal, 115 Pa. 129	36
Johnson v. *Harthshorne*, 52 N. Y. 173	48
Jones v. *Dexter*, 130 Mass. 380	36
Jones v. *Jones*, 36 N. C. 332	49
Julia, The, 8 Cranch, 181	21
Katcher v. *American Express Co.*, 94 N. J. L. 165	42
King v. *Hamilton*, 16 Ill. 190	49
Knipe v. *Livingston*, 209 Pa. 49	36
Lees v. *LaForest*, 14 Beav. 250	36
Martin v. *Franklin*, 4 Johns. 124	41
Mayer v. *Garvan*, 270 Fed. 229, aff. 278 Fed. 27	4, 7, 20, 22, 43
McLaren, In re, 125 Fed. 835	26
Miller v. *Lord*, 11 Pick. 11	49
Moore v. *Huntington*, 17 Wall. 417	24, 29
Murphy v. *Camac*, Fed. Cas. 9948	41
Pierce v. *Jackson*, 6 Mass. 242	26
Rapid, The, 8 Cranch, 155	21
Robson v. *Premier Oil & Pipe Line Co. Ltd.*, (1915) 2 Ch. 124	21
S. S. Celia v. *S. S. Volturno*, (1921) L. R. 2 App. Cas. 544	42
Scott v. *Hornsby*, 1 Call (Va.) 35	41
Simonoff v. *Bank*, 279 Ill. 248	42
Smith v. *Knight*, 88 Ia. 257	49
Smith v. *Smith*, 18 R. I. 722	48
Stevenson & Sons, Ltd. v. *Aktiengesellschaft, L. R.* (1918) A. C. 239	23
Taylor v. *Fields*, 4 Ves. Jr. 396	26
Wedderburn v. *Wedderburn*, 22 Beav. 84	25
West v. *Skip*, 1 Ves. Sr. 239	20
Whitney v. *Dewey*, 158 Fed. 385	36
Witter v. *Richards*, 10 Conn. 37	26
United States ex rel. Angarica v. *Bayard*, 127 U. S. 251	50
United States v. *Grossmayer*, 9 Wall. 72	21
United States v. *Verdier*, 164 U. S. 213	50

TABLE OF STATUTES

Judicial Code:	
Sec. 241 (c. 231, 36 Stat. 1087, 1157)	2
Trading with the Enemy Act:	
Sec. 2 (c. 106, 40 Stat. 411)	21
Sec. 3 (c. 106, 40 Stat. 412)	21
Sec. 7–c (c. 106, 40 Stat. 418)	4
Sec. 7–c, as amended November 4, 1918 (c. 201, 40 Stat. 1020)	4
Sec. 8–a (c. 106, 40 Stat. 418)	44
Sec. 17 (c. 106, 40 Stat. 425)	2
Bankruptcy Act of 1898:	
Sec. 5–a (c. 541, 30 Stat. 547)	26

TEXTS

Page

Lindley on Partnership (4th Ed.), 569, 666, 1015, 1016, 1041, 1046 ---------- 25
Story on Partnership (7th Ed.), sections 328, 344, 347, 350, 355 ---------- 25
Collyer on Partnership (6th Ed.), sections 623, 624 ---------- 25
Lewin, Trusts (7th Ed.), 255 ---------- 25

In the Supreme Court of the United States

OCTOBER TERM, 1925

No. 232

HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, Appellant

v.

RICHARD MAYER, EDWIN REIS, KARL B. STRAUSS, et al., etc.

No. 233

RICHARD MAYER, APPELLANT

v.

HOWARD SUTHERLAND, ALIEN PROPERTY CUSTODIAN, Edwin Reis, Karl B. Strauss, et al., etc.

No. 234

EDWIN REIS, KARL B. STRAUSS, AND ANNY REIS, etc., Appellants

v.

RICHARD MAYER AND HOWARD SUTHERLAND, AS Alien Property Custodian

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF ON BEHALF OF HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN

PREVIOUS DECISIONS IN THESE CASES

The opinion of the Circuit Court of Appeals in these cases is reported in 1 F. (2d) 419. (R. 149–155.) The opinion of the District Court has not been reported but it will be found on pages 68 ff. of the Record.

GROUNDS FOR THE JURISDICTION OF THIS COURT

Case No. 232 is before this Court upon an appeal by the Alien Property Custodian, plaintiff in the District Court, from a final decree of the Circuit Court of Appeals for the First Circuit, dated September 18, 1924 (R. 155, 156), which affirmed with modifications a decree of the District Court of the United States for the District of Massachusetts, entered October 2, 1923 (R. 66).

Cases No. 233 and No. 234 are before the Court upon cross-appeals prosecuted, respectively, by Richard Mayer, a defendant in the District Court, and by Edwin Reis, Karl B. Strauss, and Anny Reis, as trustee for Anneleise Reis and Ruth F. Reis from the same decree of the Circuit Court of Appeals for the First Circuit. (R. 155, 156.) These appeals have been prosecuted pursuant to Section 241 of the Judicial Code. (c. 231, 36 St. 1087, 1157.) The appeals were all allowed during the month of December, 1924 (R. 156, 159, 162), and consequently are not controlled by the Act of February 13, 1925.

The authority of the District Court to deal with the cases is found in Section 17 of the Trading with the Enemy Act (c. 106, 40 Stat. 411, 425) by which section the provisions of the Judicial Code with respect to appeals are extended to the provisions of the Trading with the Enemy Act.

STATEMENT OF THE CASES

These cases were begun by a suit instituted by Thomas W. Miller, then Alien Property Custodian, in the District Court of the United States for the District of Massachusetts on September 1, 1922, against Richard Mayer, a citizen of the United States, Edwin Reis, Karl B. Strauss, Estate of Ludwig Reis, and Anny Reis, as trustee of Anneleise Reis and Ruth F. Reis, all of whom were citizens and residents of Germany, and the Richard Mayer Company and the Anglo-American Cotton Company, corporations organized under the laws of the Commonwealth of Massachusetts, to compel Richard Mayer to account to the Alien Property Custodian for the interest of Edwin Reis, Karl B. Strauss, Estate of Ludwig Reis, and Anny Reis as trustee for Anneleise Reis and Ruth F. Reis (hereinafter referred to as enemies) in American assets of a partnership doing business under the name of Reis & Company, which was composed of Richard Mayer and the enemies (R. 1 to 11), which enemy interest had been duly determined and demanded by the Alien Property Custodian (R. 12 to 26, inclusive).

The stock of the defendant corporations was equitably owned by Reis & Company although from time to time this stock stood in the name of various employees of the corporations.

The enemy defendants entered a general appearance in the case and submitted themselves to the jurisdiction of the court.

Originally the Alien Property Custodian had secured possession of all the American assets of the partnership which was known as Reis & Company, pursuant to his demands. It was determined in the former case of *Mayer* v. *Garvan,* 270 Fed. 229, aff. 278 Fed. 27, that Mayer was entitled to retain the American assets of the partnership in his possession until the determination of the amount due him on an accounting.

Pursuant to the decision in that case the Custodian returned to Mayer all of the American assets of the partnership and after Mayer had failed to make an accounting satisfactory to the Custodian he brought this suit to compel an accounting by Mayer for the enemy interest in the assets. It is from the decree of the Circuit Court of Appeals affirming and modifying the District Court decree which stated an account, that these appeals are taken.

The Alien Property Custodian, under the provisions of Subsection (c) of Section 7 of the Trading with the Enemy Act (c. 106, 40 Stat. 411, 418), and Subsection (c) of Section 7 as amended November 4, 1918 (c. 201, 40 Stat. 1020), is admittedly entitled to all of the American assets of Reis & Company except the distributive share of Mayer.

The bill of complaint set forth the partnership agreement (R. 7 ff.), the determination of enemy ownership, and the seizure of the partnership assets by the Alien Property Custodian, the former suit by Mayer for the return of those assets, and the

decree therein, and prayed that Mayer and his enemy partners be severally ordered to disclose the present value in cash of the assets of the partnership within their possession or control, that an accounting be had, that Mayer be charged with losses occasioned by his misuse of the partnership funds, and credited with the value of his interest in the European assets, and ordered to pay over to the plaintiff the surplus, if any, which remained out of the American assets after the satisfaction of the amount due him.

The answer of the defendants, Mayer, the Anglo-American Cotton Company, and the Richard Mayer Company will be found on pages 27 ff. of the Record, and the answer of the enemy partners will be found on pages 34 ff. of the Record. Mayer annexed to his answer a copy of a document addressed by him to the Alien Property Custodian in June, 1922, and entitled "An Accounting." (R. 27.)

The German defendants by answer under oath set forth the value of the European assets and Mayer's interest therein.

Defendant Edwin Reis produced the partnership books of account at the trial and testified concerning the value of the European assets. Mayer was present in court but did not testify.

The partnership agreement was made in Germany on May 24, 1913. A translation thereof is annexed to the plaintiff's bill (R. 7), and is admitted by Mayer in his answer (R. 27). Mayer contributed his business in Boston, which he guar-

anteed to be worth 200,000 marks. After inventory it was credited to him on the partnership books at 206,054.02 marks. (Plaintiff's Exhibit 11, R. 131, 132.) He contributed no further capital to the firm. The other partners contributed 2,655,025.03 marks. (Partnership Agreement, Par. 7, R. 9.) Each partner was to have 4½ per cent interest on his capital. The Reises were each to have yearly salaries of 22,000 marks, Strauss and Mayer salaries of 20,000 marks and 16,000 marks, respectively. The profits were to be shared 27½ per cent to each of the Reises, 25 per cent to Strauss, and 20 per cent to Mayer. The profits were to be credited to the capital accounts of the several partners. (Agreement, Par. 10, R. 10.) Interest and salaries were the only withdrawals permitted under the agreement.

The "Main Seat" of the partnership was at Friedrichsfeld, Germany. The firm had branches at Manchester, England, and at Boston, Massachusetts. The assets and liabilities of both these branches were kept on the Friedrichsfeld books (R. 81, 82) until after the European war made communication difficult or impossible. The American partner stopped sending regular reports late in 1914 or early in 1915.

On April 6, 1917, when war was declared to exist between the United States and Germany, the partnership assets in Mayer's possession are admitted by Mayer to have had a value of $910,014.07. (Mayer's Answer, Ex. A., R. 31.)

The value of his share in the European assets of the firm, including his capital contribution, was found by the District Court to be 2,097,223.72 marks on that date. (R. 71.) Under the German law the partnership was not dissolved by the entry of the United States into the war, as the court found in the former case. (See Par. 4 of Final Decree in *Mayer* v. *Garvan,* R. 3.)

Mayer admits himself to be accountable for $828,072.72. This represents the cost price of the securities returned to him by the Custodian in June, 1922, and the book value of the stock of the Richard Mayer Company. (Mayer's Answer, R. 33, 34.) The Alien Property Custodian conceives the true rule of accounting to require the loss in the American assets, occuring without fault of either party after dissolution of the firm and before an accounting, to be borne ratably by the partners. The Alien Property Custodian contends that the same rule must be applied to the European assets. The depreciation of the German currency in which the European assets are measured, and of which those assets mainly consisted, must be borne ratably by all the partners down to the date when their rights have been fixed by an accounting. This proceeding is for an accounting to fix those rights. It is the first accounting ever held.

In the former case of *Mayer* v. *Garvan,* Mayer contended that no accounting was necessary. He claimed to own the American assets by virtue of an

alleged dissolution agreement, which was there adjudged to be "void and of no effect." It was further adjudged that upon the evidence there presented—

> this court is unable to state an account as between the parties, or Richard Mayer and the Alien Property Custodian, there being no evidence of the actual value of the American property or of the German or English property and there being no evidence of the liabilities of the firm.

(Par. 9 of final decree in *Mayer* v. *Garvan*, R. 4.) Pending the time when evidence should be available to permit such accounting, Mayer was awarded possession of the American assets of the firm.

The necessary evidence was first rendered available to the Government in this proceeding by the voluntary appearance of the German partners and the production of their books, including the books withheld in the former suit. Oral testimony as to the value of the European assets was also produced. Thus in this proceeding it for the first time became possible to state in dollars and cents how much the Government is entitled to receive as the enemy share of the American assets of the firm.

That the enemy partners own 80 per cent of the net assets of the partnership, after deducting the capital contributions, is not disputed. Nor is it disputed that there has been no accounting since the dissolution of the partnership by the outbreak of war.

THE DECISION OF THE DISTRICT COURT

The District Court, after considering the accounts rendered by the German partners and after receiving oral and documentary evidence thereon, found the net value of Mayer's share in the European assets of the firm to be 2,097,223.42 marks, and ruled that the German partners should account for such amount "as of April 6, 1917." It was found that the nearest date to April 6, 1917, when a rate of exchange was quoted was March 30, 1917, when the value of the German mark was about 18 cents; that the first quotation thereafter was sometime in 1919, when the value of the mark was 7⅞ cents; that on June 2, 1921, "when the state of war was declared to be at an end by the Act of Congress, the German mark had declined to 1.35 cents"; and at the time of the beginning of the hearing in the District Court, March 26, 1923, its value was 0.0048 cents. Nevertheless, in translating the amount of this interest into dollars the trial court disregarded the value of the mark on the date as of which he ruled the accounting should be stated, or on any date subsequent to the outbreak of war when an accounting could be had and settlement made, and applied the theoretical "par of exchange" based on the historical value of "the gold mark."

In determining the distributive share of Mayer in the German assets the District Court disallowed the reserves shown on the books on December 31,

1916, and added to the book value the actual value of land, buildings and machinery in excess of such book value, and Mayer's share in the profits from December 31, 1916, to April 6, 1917. He allowed the charges for taxes and payments made to Mayer's German relatives.

With respect to the date as of which the account should be stated, the court ruled that the accounting should be "as of" the date of dissolution, or April 6, 1917. The court received evidence, however, showing the value of the European assets both on April 6, 1917, and on the date of the hearing, and the German partners stated accounts as of each date.

The court found that (R. 71)—

> The German partners could not determine the distributive share in the firm assets and if they had been able to do so they could not pay any part of his share to him while a state of war continued between Germany and the United States. They are not, therefore, liable for the payment of interest upon his distributive share.

It also found that (R. 72)—

> for the purposes of this accounting, no part of the profits made by the firm in Germany after the outbreak of the war should be added to Mayer's distributive share.

The account as stated by the District Court may be set forth in tabular form as follows:

STATEMENT OF ACCOUNT AS FOUND BY DISTRICT COURT. (R. 68–74)

Mayer's interest in the German assets as shown by the books Dec. 31, 1916		M2, 107, 499. 89
Add: (1) Mayer's interest in the excess value of land, buildings, and machinery over book values		69, 507. 06
(2) Mayer's interest in the Reserves as of Dec. 31, 1916		191, 362. 86
(3) Mayer's interest in the Profits earned between Dec. 31, 1916, and Apr. 6, 1917		45, 686. 31
Total amount of Mayer's interest in the German assets Apr. 6, 1917		2, 414, 056. 12
Deduct: (1) German Government taxes assessed on Mayer's partnership interest	M266, 432. 40	
(2) Payments by direction of Mayer to his relatives in Germany	50, 400. 00	
Total to be deducted		316, 832. 40
Net amount of Mayer's interest in the German assets		2, 097, 223. 72
Value of American assets for which Mayer admits accountability		$828, 072. 72
Deduct: (1) Mayer's interest in the American assets, his interest being 20% of $828,072.72	$165, 614. 54	
(2) Mayer's interest in the German assets (M2,097,223.72) translated into dollars at the rate of exchange of $0.2382 per mark	499, 558. 69	
Total to be deducted		665, 173. 23
Which leaves the Custodian's ascertained share in the American assets		162, 899. 49

THE DECISION OF THE CIRCUIT COURT OF APPEALS

The Circuit Court of Appeals modified the accounting as rendered by the District Court in certain particulars, all of which modifications were in favor of Mayer. The Circuit Court of Appeals allowed Mayer credit for an item of $4,000, which Mayer paid as a premium upon a bond which he gave the Alien Property Custodian at the conclusion of the case in the Circuit Court of Appeals of *Mayer* v. *Garvan* referred to above.

The Circuit Court of Appeals also disallowed the charge against Mayer for the taxes which had been paid the German Government by the German partners on Mayer's share in the German partnership, and also disallowed the charge against Mayer for payments to Mayer's relatives made by the German partners with the exception of the 600 marks which had been paid prior to the declaration of war between the United States and Germany. The Circuit Court of Appeals also allowed Mayer's counsel fees for the prosecution of the suit of *Mayer* v. *Garvan*. This amount has not been ascertained.

The account as rendered by the Circuit Court of Appeals may be set forth in tabular form as follows:

STATEMENT OF ACCOUNT AS FOUND BY CIRCUIT COURT OF APPEALS. (R. 149–155)

Mayer's interest in the German assets as shown by the books Dec. 31, 1916		M2, 107, 499. 89
Add: (1) Mayer's interest in the excess value of the land, buildings, and machinery over book values		69, 507. 06
(2) Mayer's interest in the Reserves as of Dec. 31, 1916		191, 362. 86
(3) Mayer's interest in the Profits earned between Dec. 31, 1916, and Apr. 6, 1917		45, 686. 31
Total amount of Mayer's interest in the German assets Apr. 6, 1917		2, 414, 056. 12
Deduct payments made to Mayer's relatives in Germany before the declaration of war		600. 00
Net amount of Mayer's interest in the German assets		2, 413, 456. 12
Value of American assets for which Mayer admits accountability		$828, 072. 72
Deduct: (1) Mayer's interest in the American assets, his interest being 20% of $828,072.72	$165, 614. 54	
(2) Mayer's interest in the German assets (M2,413,456.12) translated into dollars at the rate of exchange of $0.2382 per mark	574, 885. 25	
(3) Premium paid by Mayer for surety bond conditioned on his performance of the decree in this case	4, 000. 00	
Total to be deducted		744, 499. 79
Which leaves the Custodian's ascertained share in the American assets		[1] 83, 572. 93

[1] From this amount should be deducted an amount not yet ascertained, consisting of counsel fees and other disbursements incurred in the prosecution of the suit of *Mayer* v. *Garvan*, which amount was disallowed by the District Court but allowed by the Circuit Court of Appeals.

SPECIFICATIONS OF ASSIGNED ERRORS INTENDED TO BE URGED

While it is not the intention of the Alien Property Custodian to press or argue assignments of error 8, 9, and 12 (R. 157, 158), it is not his intention to waive the same, understanding that these will be fully argued by counsel for other parties to the record who have filed similar assignments of error. All other assignments of error of the Custodian may be dealt with under two headings as follows:

(1) The court erred in adopting the par of exchange as the basis of determining in dollars the credits to which Mayer was entitled in respect to the assets located in Germany, instead of using the rate of exchange existing at the time of proving the account.

(2) The court erred in crediting Mayer with the expenses incurred by him in connection with the suit of *Mayer* v. *Garvan*.

CONTENTIONS OF THE PARTIES

The Alien Property Custodian contends that while the partnership was dissolved on April 6, 1917, the partners remained in possession of the assets as partnerhip property until after the close of the war and the statement of the account among them. During this period it was the duty of each partner to conserve and liquidate these assets to the end of having them available for a settlement of their respective interests, as soon as settlement became legal, and an accounting had, all losses in

the firm property through no fault of the partners being firm losses. The rate of exchange to be adopted in adjusting the several interests was that which prevailed when the parties met and submitted their respective claims upon which the court was to state the account, namely, March 26, 1923, the date of the trial. Under these principles the result of the accounting stated in tabular form would have been as follows:

STATEMENT OF ACCOUNT FOR WHICH ALIEN PROPERTY CUSTODIAN CONTENDS

Mayer's interest in the German assets on Mar. 26, 1923, the date of the accounting (Defts.' Ex. XIII, R. 146, 147)		M18, 206, 591.2
Value of American assets for which Mayer admits accountability (R. 34)		$828, 072. 72
Deduct: (1) Mayer's interest in the American assets, his interest being 20% of $828,072.72	$165, 614. 54	
(2) Mayer's interest in the German assets (M18,206,591.22) translated into dollars at the rate of exchange of .0048¢ to the mark	873. 92	
Total to be deducted		166, 488. 46
Which leaves the Custodian's ascertained share in the American assets		661, 584. 26

The statement of account for which Mayer contends if accepted would leave nothing of the American assets for the Germans but would leave a deficit in his favor. It is based upon exchange taken at par or M. 4.20 to the dollar, a rate which did not in fact exist even as of the outbreak of war between the United States and Germany. Stated in tabular form the account for which Mayer contends may be expressed as follows:

STATEMENT OF ACCOUNT FOR WHICH RICHARD MAYER CONTENDS

Mayer's interest in the German assets as shown by the books Dec. 31, 1916			M2, 107, 499. 89
Add: (1) Mayer's interest in the excess value of the land, buildings, and machinery over book values			69, 507. 06
(2) Mayer's interest in the Reserves as of Dec. 31, 1916			191, 362. 86
(3) Mayer's interest in the Profits earned between Dec. 31, 1916, and Apr. 6, 1917			45, 686. 31
Total amount of Mayer's interest in the German assets Apr. 6, 1917			2, 414, 056. 12
Value of American assets for which Mayer admits accountability			$828, 072. 72
Deduct: (1) Mayer's interest in the American assets:			
Total American assets Apr. 6, 1916	$910, 014. 07		
Less amount paid to Laible	27, 175. 88		
Mayer's interest being 20% of	882, 838. 19	=$176, 567. 63	
(2) Mayer's interest in the German assets (M2,414,056.12) translated into dollars at the rate of exchange of 4.20 marks to the dollar		574, 775. 26	
(3) Interest on $751,342.89,[1] @ 6%, from Sept. 20, 1918, to June 7, 1922		167, 424. 24	
(4) Interest on $561,617.53,[2] @ 6%, from May 28, 1918, to Sept. 20, 1918		10, 483. 53	
(5) Premium paid by Mayer on surety bond conditioned on his performance of the decree in this case. (See R. 80)		4, 000. 00	
Total to be deducted			[1] 933, 250. 66
Which leaves a deficit of			105, 177. 94

[1] This is interest on total amount of Mayer's alleged share in both American and German assets between date of second seizure by Alien Property Custodian and date Mayer filed his purported accounting with the Custodian.

[2] This is interest on American assets seized by the Alien Property Custodian on May 28, 1918, between date of their seizure and date of second seizure by the Alien Property Custodian of American assets.

[3] To these deductions must be added an amount not yet ascertained, consisting of counsel fees and other disbursements incurred in the prosecution of the suit of *Mayer* v. *Garvan*.

ARGUMENT

I

THE COURT ERRED IN ADOPTING THE PAR OF EXCHANGE AS THE BASIS FOR DETERMINING IN DOLLARS THE CREDITS TO WHICH MAYER WAS ENTITLED IN RESPECT TO THE ASSETS LOCATED IN GERMANY INSTEAD OF USING THE RATE OF EXCHANGE EXISTING AT THE TIME OF PROVING THE ACCOUNT

(A) THE OWNERSHIP OF THE PARTNERSHIP PROPERTY WAS NOT ALTERED PRIOR TO THE ACCOUNTING

(1) The declaration of war between the United States and Germany did not alter the ownership of the partnership property in the respective countries.

The dissolution of the partnership was not produced by any act or wish of the partners. It arose by operation of law. The war prevented the continuance of the partnership relation but did not dispense with the necessity for an accounting. Until such accounting and distribution each partner had an interest in all of the firm assets, wherever situate. It is not disputed that all the rights of the enemy partners in the American assets of the firm became and still are vested in the plaintiff, and that he is entitled to this accounting. This accounting was contemplated by Paragraph 10 of the decree in *Mayer* v. *Garvan, supra.* (R. 4.)

Until war was declared on April 6, 1917, the partnership of Reis & Company was in full operation. The instant war was declared all intercourse between Mayer and his partners became illegal and

even though the war dissolved the partnership it became legally impossible to secure an accounting. Such intercourse was illegal at common law. *The Rapid*, 8 Cranch, 155; *The Julia*, 8 Cranch, 181, 193; *United States* v. *Grossmayer*, 9 Wall. 72; *Habricht* v. *Alexander*, Fed. Cas. No. 5886; *Esposito* v. *Bowden*, 22 Eng. Rul. Cas. 399; *Robson* v. *Premier Oil & Pipe Line Co., Ltd.*, (1915) 2 Ch. 124, 133.

Section 3 of the Trading with the Enemy Act approved October 6, 1917 (c. 106, 40 Stat. 411, 412), expressly prohibited such trading thereby adopting and broadening the common law rule. Section 2 of the Act defines "to trade" as follows:

> (a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.
>
> * * * * *
>
> (c) Enter into, carry on, complete or perform any contract, agreement, or obligation.
>
> (d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.
>
> (e) To have any form of business or commercial communication or intercourse with.

Such accounting remained legally impossible after the General Enemy Trade License of July 8, 1920, because that license expressly exempted from its operation—

> any trade with respect to any property which heretofore, pursuant to the provisions of the Trading with the Enemy Act as

> amended, has been reported to the Alien Property Custodian, or should have been reported to him or any property which heretofore, pursuant to the provisions of said Act the Alien Property Custodian has seized, or has required to be conveyed, transferred, assigned, delivered or paid over to him.

An accounting could not legally be had, therefore, until the state of war ended and Congress so declared on July 2, 1921. But at that time and until May 4, 1922, when the decree after mandate was entered in *Mayer* v. *Garvan,* Mayer was urgently pressing before the District Court and before the Circuit Court of Appeals his claim to all the American assets under the void instrument alleged to have been executed on February 7, 1917. That contention must necessarily have been disposed of before an accounting could be had. In that proceeding the German partners were not before the court. Evidence for an accounting was not available, and the Circuit Court of Appeals affirmed the decree of the District Court, holding—

> That upon the present state of the evidence, this court is unable to state an account as between the parties, or Richard Mayer and the Alien Property Custodian * * *.

(Par. 9 of decree in *Mayer* v. *Garvan,* R 4.)

The plaintiff, who acquired the rights of the German partners in 1918, is in no way chargeable with laches in the matter of seeking an accounting. Until May 1922, he was resisting Mayer's unfounded claim that no accounting was necessary.

It is well settled that mere dissolution—without an accounting—has no effect upon the title to partnership property. Mayer's title to the American assets was no greater after the declaration of war than before. That dissolved the partnership but did not settle its affairs. They could not be settled without an accounting. Dissolution by war does not free a party from his duty to act in good faith with respect to the rights of his partners.

In the leading American case on dissolution by war, *Griswold* v. *Waddington*, 16 Johns. 438, it was held that the partnership may be said to continue as to everything that is past until all preexisting matters are wound up and settled. See also *Douglas* v. *United States*, 14 Ct. Cl. 1; *Cramer* v. *United States*, 7 Ct. Cl. 302, 304.

In *Stevenson & Sons, Ltd.*, v. *Aktiengesellschaft, etc.*, (1918) A. C. 239, reversing in part the decision in (1917) 1 K. B. 842, it was distinctly held that the dissolution by war did not entitle the English partner to insist on the retention of his share or on taking over the enemy share at a valuation. The effect of war was not to confer on the English partner the right to purchase the enemy partner's interest in the partnership property, although he could make use of it subject to the duty of accounting for a share of the profits attributable to the use of the partnership property as distinguished from those attributable to the skill or industry of the English partner.

With respect to the equitable ownership of partnership property after dissolution and before accounting, there is therefore nothing peculiar to those cases where war produces the dissolution. The situation is governed by the familiar rules as to dissolution by death or by operation of law generally.

In *Freeman* v. *Freeman,* 136 Mass. 260, 263, 264, the court said:

> This duty of the surviving partner may not be strictly that of a trustee, but it is analogous; and he is not allowed to derive a distinct and independent personal advantage either directly or indirectly, from the use of the partnership assets, but he must manage and dispose of them with a single eye to the advantage of the partnership estate which he has to administer. * * * *That which was partnership property before the dissolution continues to be so afterwards;* * * *. The surviving partner is not allowed to divide the property in specie or to take it himself at a valuation.* (Italics supplied.)

With respect to the same sort of a situation where a partnership had been dissolved by death, this Court in *Moore* v. *Huntington,* 17 Wall. 417, 423, said:

> The defendants are credited in the schedule of N. Webb & Co. with fifty per cent of the debts due the firm, after deducting what Webb and his wife owed that firm, and in the other schedule they are credited with $100,000, both for bad debts. This may or

> may not do justice, and it may possibly be the only approximate mode of doing it. But it goes upon the ground of charging the defendants with everything at the date of the decedent's death at its value at that time. Such is not the true rule. It was a legal right of the defendants, as surviving partners, to close out the concern, collect and dispose of its choses in action, and its property, pay what it owed, and then pay over to the plaintiff her just share of what was left. They were not bound to become purchasers of the decedent's interest at a valuation. But they were bound to use reasonable diligence and care in closing out the business, and in taking care of the decedent's interest. If they used such care and diligence they are only liable for what was realized in their hands when it was done. If they did not they are liable for what might have been realized by the use of such care and diligence.

See also Lindley on Partnership (4th Ed.), 569, 666, 1015, 1016, 1041, 1046; Story on Partnership (7th Ed.), sections 328, 344, 347, 350, 355; 2 Collyer Partnership (6th Ed.), sections 623, 624; Lewin Trusts (7th Ed.), 255; *Busch* v. *Clark,* 127 Mass. 111; *Case* v. *Abeel,* 1 Paige 393, 398; *Evans* v. *Evans,* 9 Paige 178; *Wedderburn* v. *Wedderburn,* 22 Beav. 84.

That mere dissolution does not divest the partnership of its title as a partnership to its assets is also manifest from the fact that a partnership may be adjudged a bankrupt " after its dissolution and

before final settlement thereof." Section 5–a of the Bankruptcy Act of 1898 (c. 541, 30 Stat. 544, 547); *In re Coe,* 157 Fed. 308; *In re McLaren,* 125 Fed. 835. This would be a vain and useless provision unless the firm had title to assets which may pass to the trustee. Not until the firm debts are paid and accounts are taken is there any right in the individual partner to withdraw anything on account of his share in the capital or profits. *West* v. *Skip,* 1 Ves. Sr. 239, *Fox* v. *Hanbury,* 2 Cowp. 445, *Taylor* v. *Fields,* 4 Ves. Jr. 396; *Pierce* v. *Jackson,* 6 Mass. 242; *Doner* v. *Stauffer,* 1 Rawle, Penrose & Watts 198; *Crane* v. *French,* 1 Wend. 311; *Witter* v. *Richards,* 10 Conn. 37.

(2) The ownership of the partnership property was not prior to the accounting altered by the acts of the parties.

The title to the American assets of the partnership has been definitely established as being in the partnership by the decree of the Circuit Court of Appeals in *Mayer* v. *Garvan, supra.* That suit was instituted by Mayer to secure the return from the Alien Property Custodian of the American assets which had been seized. One of the contentions of Mayer in that case was that title to the American assets of the partnership vested in him at the outbreak of the war on April 6, 1917. The decree of the District Court of May 4, 1922, entered after mandate of the Circuit Court of Appeals for the First Circuit, definitely determined that the title to the assets remained in the partnership.

The decree provided that Mayer was entitled to immediate repossession of the assets seized by the Custodian to be held by him under the terms and provisions of Section 8–a of the Trading with the Enemy Act.

It was further held that Mayer had a lien on these assets for what was due him from the partnership *on an accounting* of the affairs of the partnership and was entitled to retain the American assets in his hands until the satisfaction of the amount due him on such accounting. (R. 4.) No appeal was prosecuted from the decision of the Circuit Court of Appeals upon which the decree of the District Court making such a holding was entered. The American assets were returned to Mayer and he held them under that decree. Therefore the title to the American assets is definitely established as being in the partnership.

As to the European assets which were in the possession of the German partners, the evidence clearly demonstrates that title to them also remained in the partnership.

Edwin Reis, one of the partners, testified (R. 83) that the European partners did not take over the European assets on the outbreak of war with America. He further testified that the share of Richard Mayer of the profits was credited to him annually on the books in the private ledger at Friedrichsfeld. On cross-examination the witness testified (R. 88) that on April 6, 1917, the European

partners did nothing by way of separating Richard Mayer's assets from the assets of the firm or the other partners, but carried him on as a partner and the account showed what was due him at any time. The witness stated that the German partners did not take and put aside any assets as separate assets of Richard Mayer on April 6, 1917; that on April 6, 1917, the business that Reis & Company was engaged in in Europe was the same as before, and that business has been carried on without any break up to to-day; that they continued the partnership as if Richard Mayer were still a partner and continued to use the assets in the ordinary course of a business as if Mayer were still a partner as they still considered him. (R. 88.)

Furthermore the witness testified (R. 90) *that since April 6, 1917, down to date, the European partners have continued in the form of cash on deposit in banks a sum sufficient to pay out the capital interest of Mayer as shown by the books, and that the general partners still have such an amount in the form of cash in German marks.*

Plaintiff's Exhibit 11 contained on pages 131 to 136 inclusive, of the Record is the transcript of the private accounts of Richard Mayer in the private partnership ledger. These accounts show that after April 6, 1917, the German partners continued to carry Richard Mayer's capital interest on the books of the partnership and to credit him with the profits thereon.

No loss has resulted from the use of the firm assets in Germany by the enemy partners. On the contrary there has been a gain regularly credited to Mayer's account in the partner's ledger. (R. 131, 136.) There has also been an appreciation in the value of the unliquidated assets, as has already been shown. *The only loss has been due to the depreciation in the German currency, which, of course, was not causally related to any act of the partners.*

Mayer's attempt to charge the plaintiff, who is vested with the rights of the German partners in this accounting, with all his loss due to the depreciation in the German currency in which the value of the European assets is measured, manifestly rests upon an attempt to compel the German partners to *become purchasers of Mayer's interest at a valuation without an accounting.* It is settled by the authorities already cited, both English and American, that he was not entitled to do this. See *Moore* v. *Huntington, supra.*

The only purpose of Mayer's contention that there was an appropriation of the German assets by the German partners for their own use is to support his contention that the partners thereupon became liable to account for the property at its then valuation with interest. This familiar principle of Partnership Law was enunciated by this Court in *Clay* v. *Field,* 138 U. S. 464. In fact the Circuit Court of Appeals, in its decision in this

case (R. 152), referred to this well-settled rule, citing *Clay* v. *Field* and other cases.

The Circuit Court of Appeals, however, appears to have disregarded the modification in the application of the rule where a partner, after dissolution, has acted in good faith, and "with a view to the best interests of all concerned," and loss in partnership assets has occurred by "public war." In *Clay* v. *Field* a surviving partner who failed to liquidate the assets of the firm after dissolution of the partnership was held to be accountable for the value of the personal property of the partnership at the time of dissolution, but was not held to be accountable for the value of that portion of the partnership assets consisting of slaves whose value was wiped out by reason of emancipation. The Court, speaking by Mr. Justice Bradley, said (pp. 473–474, 476):

> The general principle of law undoubtedly is, that on the dissolution of the firm by the death of one of the partners, it is the survivor's duty to settle up the partnership affairs within a reasonable time, and pay over to the representatives of the deceased partner the amount due to them; and if he takes the responsibility of continuing the business of the firm, and using the property of the partnership, he becomes liable for losses that may occur, and it is in the option of the representatives of the deceased partner either to insist upon a division of the

profits which may be made in thus carrying on the business, or upon being paid the amount of the deceased's share in the capital, with lawful interest thereon, after deducting his indebtedness to the firm. (See Lindley on Part., Book III, Chap. 10, pp. 976 to 1046, 1047, 4th ed.) The application of the rule in this case would, strictly speaking, entitle the representatives of D. I. Field to call for an account of his share in the capital of the concern at the time of his death, with lawful interest. This is what they do demand as regards the personal property, which was appraised at $33,663, one-half of which, with the interest thereon, they claim should be accredited to the estate of D. I. Field. But this personal property consisted almost wholly of the slaves on the plantation; and the court below charged C. I. Field and his estate with the value of their service as long as they continued slaves, as well as with reasonable rent for the real estate during the whole period from the death of D. I. Field, except the years 1863, 1864 and 1865, when the war was flagrant.

Under such anomalous circumstances and such unexpected events, it seems hardly just to visit upon a surviving partner, acting in good faith and with a view to the best interests of all concerned, the strict consequences of the rule. In our view, equity, when called upon to settle the mutual rights of the parties, may very properly mitigate the hardships of the rule, especially when,

> as in this case, the loss has occurred by public war.
>
> * * * * *
>
> We think, therefore, on the whole, that the judge presiding in the court below adopted the proper course in disallowing the claim for the value of the slaves, and charging C. I. Field and his estate with the fair rental value of the property, including that of the slaves as long as they were slaves, and crediting them with the taxes paid and the permanent improvements. He could not do more without making the law an engine of hardship and severity; he could not do less without disregarding its plain principles.

There is a striking analogy between the loss of the value of the slaves in the *Clay case* and the loss resulting from the depreciation of the German currency in which the European assets of this partnership were measured, and of which they chiefly consisted. The loss in each case occurred without fault or neglect on the part of any of the partners in whose possession the assets were, but was due to the effect of "a public war."

(B) THE CONDITIONS EXISTING SUBSEQUENT TO APRIL 6, 1917, AND PRIOR TO THE FILING OF THE BILL OF COMPLAINT IN THIS SUIT RENDERED ALL LOSSES TO PARTNERSHIP ASSETS, NOT DUE TO THE NEGLECT OR FAULT OF ANY PARTNER, A PARTNERSHIP LOSS

The discussion under sub-heading A has demonstrated the legal impossibility of communication between the American partner and the German partners at all times subsequent to the dissolution

of the partnership, that is, subsequent to the outbreak of war between the United States and Germany, and prior to the end of the war on July 2, 1921. Subsequent to July 2, 1921, and until May, 1922, the litigation of *Mayer* v. *Garvan* was undetermined and prevented a statement of accounts. An accounting showing the final distributive share of the parties can now for the first time be stated. During the period subsequent to April 6, 1917, the German partners and Mayer could do nothing more than hold the assets in their respective possessions and conserve them until such time as an accounting became legally possible. Under such circumstances depreciation of any partnership assets in the possession of any of the partners, in the absence of neglect or fault on his part, cannot be charged against his share in the partnership assets when the account is had. In other words, the depreciation occurred with respect to the assets in possession of the Germans whose retention of these assets did not affect the title thereto. The condition of these assets in Germany, and the duty of the German partners with respect thereto, therefore become important.

On April 6, 1917, nearly 95 per cent of the European assets of the firm were either cash or quick assets, which were turned into cash in the year 1917. (R. 85.) This cash was in the form of German paper marks. There was no gold currency in Germany then, nor had there been since 1914.

(R. 85.) The paper currency had been legal tender since the statutes of August 4, 1914. (R. 98, 99.) The firm bank deposits represented a right to withdraw only this paper currency. The securities and bills receivable were, of course, payable in currency. The merchandise was sold therefor. Except for the comparatively small items of plant and machinery, the depreciation in the German currency meant a corresponding depreciation in the value of the partnership assets in Europe. Mayer is the equitable owner of 20 per cent of those assets until his rights have been determined by the accounting in this proceeding. The exact amount of his distributive share is here to be settled. Until that determination and settlement, the gains and losses from the fluctuations in the value of the assets, whether tangible property or marks or dollars, equitably belong to all the beneficial owners thereof. The American assets represent a certain number of dollars. The German assets represent a certain number of marks. Mayer's beneficial interest is approximately 20 per cent of those marks as it is 20 per cent of the dollars which measure the American assets. His lien is to secure the payment of his interest in both funds on an accounting. The amount must be translated into dollars as the basis of the decree, since an American court can give judgment only in dollars. *The Edith,* Fed. Cas. No. 4281. But the decree must none the less be for the actual value of the marks which it represents, not for some fictitious or historical value.

Since the decree is to be stated in dollars, it is appropriate to describe what has happened to the German assets as depreciation. It is, of course, true that if the account were stated in the language of the partnership agreement, in the language of the majority partners, the assets in Germany have not depreciated but the American assets have appreciated. If this account were to be settled in the normal way, at the home office of the firm in Germany or by a German court, as Mayer stipulated to settle differences with his partners (Agreement, Par. 15, R. 11), the value of the American assets would be translated into marks for that purpose. The appreciation would be enormous. Money is the domestic yardstick of values. Internationally it is a commodity, like any other. Its value fluctuates according to economic laws. The only difficulty here is that the comparative value of German and American money has changed violently since this partnership was dissolved and before it was possible to settle its affairs. This change must here be regarded as a *depreciation* of the German assets.

It is clear that this depreciation was not due to any fault or neglect of the German partners. *There is no suggestion that they were under a duty to transfer the German assets into other countries or other currency even if the German government would have permitted such a course.* A partner's duty, after dissolution as before, is to observe abso-

lute fairness and good faith toward his partners in dealing with partnership property. *Jones* v. *Dexter,* 130 Mass. 380; *Whitney* v. *Dewey,* 158 Fed. 385 (C. C. A.); *Betts* v. *June,* 51 N. Y. 274; *Beam* v. *Macomber,* 33 Mich. 127; *Lees* v. *LaForrest,* 14 Beav. 250; *Johnson's Appeal,* 115 Pa. 129. But he is under no liability to indemnify the firm from loss caused by an honest error in judgment. If his act is not wanton or fraudulent, a partner cannot be charged with the results of lack of discretion or good judgment. *Charlton* v. *Sloan,* 76 Iowa 288; *Knipe* v. *Livingston,* 209 Pa. 49; *Fordyce* v. *Shriver,* 115 Ill. 530.

The position taken by Mayer may fairly be illustrated by an analogy. Assume that A and B were partners and that the entire assets of the firm consisted of 200 sheep. A resides in the United States and B in Germany. On April 6, 1917, when war was declared, A had 100 sheep in his possession and B had 100 sheep in his. The flocks of sheep were of equal value. B, the partner in Germany, cared for the flock of sheep in his possession to the best of his ability, but before the war ended and an accounting became possible all but ten of B's flock of sheep were requisitioned and confiscated by the German Government without compensation for use in feeding the German Army. The sheep in A's possession in America are alive and healthy. Assume that in a suit for accounting A says, as Mayer says in this case, " on dissolution of the firm I took over this flock of sheep as my

own, subject only to a duty to account for any excess value this flock of sheep *then* had over the flock of sheep in your possession. There was then no excess. Your share on accounting is the ten sheep which were not taken by the German Government."

In the present case there were certain assets in the United States in Mayer's possession. There were assets in Germany in the German partner's possession. By reason of the depreciation in German currency due to no fault whatsoever of the German partners, the assets in Germany have shrunk so that they are worth very little. Mayer should not on the accounting be permitted to say that the German partners substantially must suffer the loss of their share in any of the assets, because prior to the accounting those assets in their possession depreciated in value. It is submitted that such a result is inconceivable in a court of equity.

(C) THE DETERMINATION, THEREFORE, OF THE RESPECTIVE RIGHTS AND INTERESTS OF THE PARTNERS MUST BE MADE IN RELATION TO THE EXTENT AND CHARACTER OF THE PARTNERSHIP ASSETS EXISTING AT THE TIME OF THE ACCOUNTING, AND THE ADJUSTMENT OF THEIR RESPECTIVE INTERESTS IN TERMS OF DOLLARS MUST BE MADE IN RELATION TO THE RATE OF EXCHANGE THEN PREVAILING

Mayer admits himself to be chargeable with $828,072.72. (Mayer's answer, Ex. A, R. 34.) This sum represents the actual value of the property redelivered to him by the Custodian on June 7, 1922.

Mayer's share in the American assets is 20%, or $165,614.54, as the credit allowable to Mayer on account of the American assets in accordance with the decision below. (R. 72.)

As to the entire value of the European assets on March 26, 1923, the date of the beginning of the trial in this case in the District Court, the record is not entirely clear. It does appear, however, specifically from the record by uncontradicted evidence that Mayer's share of the European assets on that date was M. 18,206,591.22. (Defendants' Ex. XIII, R. 146, 147.) Since Mayer's interest in the partnership was 20% presumably the entire European assets were worth five times this amount, which would be M. 91,032,956.10. If Mayer is not chargeable with his share of the reserves disallowed by Judge Johnson, his share should be increased by M. 191,362.86, making the total figure M. 18,397,954.08. The value of these " marks " is shown by uncontroverted evidence to be .0048 of a cent each on the date as of which the value of the share was proved namely March 26, 1923. (R. 71.) *Mayer's credit on account of the European assets on March 26, 1923, when an accounting was first had in the District Court therefore was $873.92.* If the District Court was correct in holding that the reserves should not be charged against Mayer's share, this amount should be increased to $883.11.

All the partnership property in Europe, as it existed April 6, 1917, has been liquidated into Ger-

man marks except the plant at Friedrichsfeld. All except property worth M.828,516.54 out of a total of M.15,282,170.55 was liquidated and turned into marks within the year 1917. (R. 85.) The Franzenthal and Herzberg plants were later sold for the best price that could be obtained at the time (R. 83), and the full price credited on the books of the firm. With this liquidation Mayer's interest in the physical property became an interest in the Germany currency into which the property had been converted. So much of his share in the European assets as is not represented by the Friedrichsfeld plant, therefore, is not only measured in marks but it *consists* of marks. The Friedrichsfeld plant stands on a different basis, however. It is the only piece of partnership property that has not been sold. Its book value on December 31st, 1916, was as follows:

Land and buildings	M252,037.66
Plant and machinery	35,454.00
	287,491.66

(See balance sheet, R. 49.)

Its actual value on April 6th, 1917, was as follows (Ex. XIII, R. 146):

Land and buildings	M506,408
Machinery	128,620
	635,028

According to the uncontroverted evidence of Edwin Reis and of the expert and qualified appraiser produced at the trial, the *actual fair market*

value in cash of this property on March 26th, 1923, was as follows (R. 147):

Land and buildings	M36,600,000
Machinery	44,400,000
	81,000,000

All this appreciation, *which comes from the depreciation of the mark* (R. 83), is definitely shown and full credit therefor can be given Mayer in stating the account.

If the plant had been sold and the proceeds deposited in conservative banking institutions in Germany, a course which certainly could not have been criticized by the American partner, his ultimate share on accounting would be a mere fraction of the amount now credited to him. The same situation would prevail if the property had been taken over by a receiver or other disinterested liquidating officer and converted into cash. All the evidence as to market value of the property in Germany whether in 1917 or later, has referred to " the fair market price in the kind of marks that were then current, paper marks." (R. 86.)

The foregoing discussion shows definitely in marks the credit to which Mayer is entitled in respect to the assets located in Germany. As has been demonstrated these are the assets as they existed on March 26, 1923, and since prior to that time it was impossible for the partners to account for assets in their possession, these are the assets which must be considered in giving Mayer credits to which he is entitled.

It appears, however, that the amount due from Mayer to the German partners is stated in terms of German marks. In order for a court in the United States to give Mayer the credit to which he is entitled for these German marks it is necessary to translate the German marks into dollars. The District Court and the Circuit Court of Appeals adopted the arbitrary " par of exchange " in translating into dollars what they respectively found to be due to Mayer in marks.

It is respectfully submitted that there is no justification for the adoption of such a rule. Both the District Court and the Circuit Court of Appeals based their decision upon the authority of certain old cases which were characterized as " respectable authorities," principally *Adams* v. *Cordis,* 8 Pick. 260, and *Martin* v. *Franklin,* 4 Johns. 125.

Long prior to the outbreak of war between the United States and Germany the use of the par of exchange under circumstances such as the present had been largely abandoned by the courts and the prevailing rate of exchange generally adopted. See *Grant et al.* v. *Healey,* Fed. Cas. No. 5696; *Murphy* v. *Camac,* Fed. Cas. No. 9948; and *Scott* v. *Hornsby,* 1 Call (Va.), 35.

Certainly all the cases where the question of translating foreign currency into United States dollars has arisen since the outbreak of the Great War in 1914 have used the rate of exchange and

have adopted the rate of exchange as it existed at the time the obligation became due. There are many authorities to this effect. The principal ones, however, aside from a recent decision of this Court which will be mentioned presently, are *Hoppe* v. *Russo-Asiatic Bank,* 235 N. Y. 37; *Simonoff* v. *Bank,* 279 Ill. 248; *Katcher* v. *American Express Co.,* 94 N. J. L. 165; *S. S. "Celia"* v. *S. S. "Volturno"* (1921), L. R. 2 App. Cas. 544; *Di Ferdinando* v. *Simon Schmidts & Co.* (1920), 3 K. B. D. 409.

The question, however, has been settled by the recent decision of this Court in *Guinness et al.* v. *Hicks et al.,* Nos. 80 and 81, October Term, 1925, where this Court held that where there was a duty to pay an obligation in foreign currency, the amount to be paid in dollars was to be calculated at the *rate* of exchange existing at the date of the breach of the obligation or at the date when the money became due. In this case when the Court is called upon to determine in American dollars the credits to be allowed Mayer it must, in translating the credits in German marks into American dollars, adopt the rate of exchange existing as of the date those credits are determined and become due.

Strictly speaking the accounting is had in this case as of the date of the final decree in the District Court; but since at the trial it was not possible to prove the rate of exchange which would exist at the time the final decree was entered, and the evidences shows the rate of exchange as it existed on

the date the trial began, the rate of exchange to be used in translating the credit due to Mayer in marks into the credit in dollars should be the rate of exchange on the date the trial began, namely, March 26, 1923.

It is therefore respectfully submitted that in calculating in dollars the credits to be given Mayer upon the accounting which have already been determinated in marks should be the rate of exchange existing on March 26, 1923. On March 26, 1923, the date of the accounting, Mayer's interest in the German assets of the partnership amounted to M. 18,206,591.22. Adopting the rate of exchange existing at the date this credit to Mayer was determined, namely, 0.0048 to the mark, Mayer's credit is $873.92. If to this credit is added to Mayer's interest in the American assets, his total credit is found to be $166,488.46. Deducting this from $828,072.72, the amount with which Mayer is admittedly chargeable, leaves a result of $661,-584.26, and the Custodian is entitled to a decree for this amount.

II

THE COURT ERRED IN CREDITING MAYER WITH THE EXPENSES INCURRED BY HIM IN CONNECTION WITH THE SUIT OF MAYER V. GARVAN

Reference has heretofore been made to the case of *Mayer* v. *Garvan,* 270 Fed. 229, aff. 278 Fed. 27, in which Mayer, after the seizure of the assets of the partnership in the United States sued the Alien Property Custodian to secure the return of those

assets. The District Court directed the return of the assets to Mayer and on appeal the Circuit Court of Appeals for the First Circuit substantially affirmed the decree of the District Court.

In all of those proceedings Mayer was claiming adversely to the German partners. The decree of the court awarded him possession of the American assets because the court found that he had a lien upon the partnership assets under Section 8–a of the Trading with the Enemy Act (c. 106, 40 Stat. 411, 418), which provides as follows:

> That any person not an enemy or ally of enemy *holding a lawful mortgage, pledge, or lien,* or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and

> such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally. (Italics supplied.)

While the Government does not agree with the construction placed by the Circuit Court of Appeals upon Section 8–a, the decision of that court is the law of this case and demonstrates the nature of Mayer's claim in the suit.

At the conclusion of the Circuit Court of Appeals phase of *Mayer* v. *Garvan,* instead of the Alien Property Custodian pressing an appeal to this Court an arrangement was made whereby if the property was turned back and decree made final, Mayer would give a surety bond for $400,000 conditioned to perform any such decree as might be entered in the present case, with the stipulation in the bond that the amount should not be taken as indicative of the claim of either party; that is, the Government was entitled to claim that the liability was more than $400,000, and the sum in the bond was not to be taken as any demand by Mayer that it was in such amount. The bond contained no stipulation as to who should pay the premium thereon. Mayer paid $4,000 as a premium. (R. 80.) It is Mayer's contention that he is entitled in the partnership accounting to charge the amount of this premium against the partnership assets thereby causing the German

partners to pay 80% thereof. The District Court disallowed the amount of the premium as a credit to Mayer. This was reversed by the Circuit Court of Appeals.

In *Mayer* v. *Garvan* the court did not return the property to Mayer because it was partnership property but returned the property to Mayer because Mayer had a personal claim against the property, namely, his claim to subject the property to the payment of his interest in the partnership. The court, therefore, recognized the fact that Mayer's suit was essentially in furtherance of a personal claim and not for the purpose of protecting partnership assets as such. It was a lien of Mayer personally.

After the conclusion of *Mayer* v. *Garvan* in the Circuit Court of Appeals, under the provisions of the Judicial Code as they then were the Custodian possessed an absolute legal right to prosecute an appeal to this Court. Mayer as an individual, and in furtherance of his personal and individual interest, made a contract with the Custodian that in consideration of the Custodian giving up his right to appeal, Mayer would furnish a bond for the faithful performance of his obligation to account under the decree in that case. This legal right the Custodian gave up and Mayer, in consideration of that, furnished the bond. If the Custodian now is to be compelled to pay the premium for that bond, he is being deprived of at least a part of his consideration for forfeiting his right to appeal.

Mayer's counsel fees and other disbursements in *Mayer* v. *Garvan* were incurred on his own account in the assertion that the American assets of the firm were his individual property, and in support of the return of the property pursuant to Section 8 (a) of the Trading with the Enemy Act. At no time in *Mayer* v. *Garvan* was there involved a partnership right. It was a proceeding in derogation of the rights of the plaintiff and of the German partners. Counsel fees in such a case were not proper charges against his adversaries. It is respectfully submitted that the disallowance thereof was clearly right, and that the court had no authority to order such payment. *Grant* v. *Fletcher,* 283 Fed. 243, 274.

III

THERE WAS NO ERROR IN FAILING TO ALLOW MAYER INTEREST ON HIS DISTRIBUTIVE SHARE

Mayer in his appeal in case No. 233 asserts that the Circuit Court of Appeals erred in only one particular, namely, that it should have allowed him interest or other compensation for loss of use of the property taken without right by the Alien Property Custodian in 1918, claiming it as the property of Mayer's former German partners, and until its return in 1922. Neither the District Court nor the Circuit Court of Appeals allowed Mayer interest on his distributive share.

Mayer seeks to charge the Custodian with interest for the period when the Custodian held the

property. It is to be noted, as the District Court found, that the sum which has been returned to him by the Custodian "includes income earned while in the Custodian's hands in which both he and his partners share upon distribution." (R. 71, 72.) This fact is not disputed and he has acknowledged full satisfaction of the decree requiring the delivery to him of all the property seized "and its proceeds."

It is not clear to the Government upon what theory Mayer now claims to be entitled to interest. Manifestly it is either a claim against his partners or it is a claim against the plaintiff as an officer of the United States acting in his official capacity. In either case it is submitted that the claim must be rejected.

(A) MAYER IS NOT ENTITLED TO CHARGE INTEREST AS AGAINST HIS GERMAN PARTNERS

It is of course familiar law that a partner is not entitled to interest on capital which he contributes to the firm unless the partners have agreed that he shall have interest. *Hill* v. *King,* 8 L. T. Rep. (N. S.) 220; *Cooke* v. *Benbow,* 68 Eng. Ch. 1; *Ewing* v. *Ewing,* L. R. 8 A. C. 822; *Hart* v. *Hart,* 117 Wis. 639; *Smith* v. *Smith,* 18 R. I. 722.

And even where an agreement for interest on such capital exists, it is not recoverable after dissolution of the firm unless there is a special stipulation to that effect. Bradley v. *Brigham,* 137 Mass. 545; *Johnson* v. *Hartshorne,* 52 N. Y. 173, and other cases cited; 30 Cyc. 443.

It is the policy of courts in this country to require strict proof of such an agreement. *In re James,* 146 N. Y. 78, *Jones* v. *Jones,* 36 N. C. 332, and *Daniels* v. *McCormick,* 87 Wis. 255

Interest is not allowed upon partnership accounts generally until after a balance has been struck on a settlement between the partners. *Miller* v. *Lord,* 11 Pick. 11, 26, *Dexter* v. *Arnold,* 3 Mason 289, Fed. Cas. No. 3855, *Boddam* v. *Ryly,* 1 Bro. Ch. 239, *King* v. *Hamilton,* 16 Ill. 190, and *Bayly* v. *Becnel,* 30 La. Ann. 75.

In *Smith* v. *Knight,* 88 Ia. 257, there were mutual promises by partners to pay interest on monthly balances already accrued. These promises were held to be without consideration, there being no provision for such interest in the partnership agreement. An agreement to pay interest where by law interest was not payable was held to be in effect an agreement by one partner to make a gift to the other.

Under the partnership agreement the capital of the partners bore interest at 4½ per cent. (R. 9.) *There was no provision or stipulation for interest after dissolution.*

(B) MAYER IS NOT ENTITLED TO INTEREST AS AGAINST THE PLAINTIFF

If Mayer is not entitled to have interest paid out of the German partners' share of the assets, which will go to the Alien Property Custodian, the only other source from which interest could be paid

would be the Treasury of the United States. The plaintiff is prosecuting this suit in his official capacity as Alien Property Custodian. It will not be insisted that he personally should pay such interest. If interest is to be paid it is by the Government of the United States that it must be paid. It is well settled that the United States is not liable for interest in the absence of express statutory provision therefor. *United States ex rel. Angarica* v. *Bayard,* 127 U. S. 251; *Gordon* v. *United States,* 7 Wall. 188; *United States* v. *Verdier,* 164 U. S. 213.

It appears, therefore, that neither the plaintiff as an officer of the Government, nor the German partners can properly be charged with interest.

CONCLUSION

From the foregoing it appears—

(1) That the court erred in adopting the par of exchange as a basis of determining in dollars the credits to which Mayer was entitled in respect to the assets located in Germany, and that the court should have adopted the rate of exchange existing at the time of the proving of the account.

(2) That the court erred in crediting Mayer with the expenses incurred by him in connection with the suit of *Mayer* v. *Garvan.*

(3) That Mayer is not entitled to interest on his distributive share in the partnership.

It, therefore, follows that the decree of the Circuit Court of Appeals should be reversed, and the cause remanded to the District Court with instruc-

tions to enter a decree in favor of the Alien Property Custodian in conformity with the principles of law herein set forth.

Respectfully submitted.

WILLIAM D. MITCHELL,
Solicitor General,
IRA LLOYD LETTS,
Assistant Attorney General,
DEAN HILL STANLEY,
Special Assistant to the Attorney General,
E. N. CHERRINGTON,
Special Assistant to the Attorney General,
Attorneys for Howard Sutherland,
as Alien Property Custodian.

MARCH, 1926.

○

SUPREME COURT OF THE UNITED STATES.

Nos. 232, 233 and 234.—October Term, 1925.

Howard Sutherland, as Alien Property Custodian, Appellant, 232 *vs.* Richard Mayer, Edwin Reis, Karl B. Strauss, et al., etc. Richard Mayer, Appellant, 233 *vs.* Howard Sutherland, Alien Property Custodian; Edwin Reis, Karl B. Strauss, et al., etc. Edwin Reis, Karl B. Strauss, and Anny Reis, etc., Appellants, 234 *vs.* Richard Mayer and Howard Sutherland, as Alien Property Custodian.	}	Appeals from the United States Circuit Court of Appeals for the First Circuit.

271
33

[May 24, 1926.]

Mr. Justice Sutherland delivered the opinion of the Court.

These are several appeals from a decree of the court below affirming in part and reversing in part a decree of the federal district court for the District of Massachusetts. The suit was brought by the Alien Property Custodian against Richard Mayer, a naturalized citizen of the United States, two corporations, organized under Massachusetts law, Karl B. Strauss, a naturalized subject of Great Britain, and Edwin Reis and Anny Reis, in her own right as widow and as trustee for two minor children of Ludwig Reis, deceased, citizens and inhabitants of Germany, for an accounting in respect of the interest of Mayer and the German citizens in certain assets in the United States in Mayer's possession and assets in Germany in the possession of the Germans, alleged to belong to a partnership consisting of Mayer, Edwin Reis, Karl B. Strauss and Ludwig Reis.

The partnership was formed sometime prior to the declaration of war against Germany on April 6, 1917, and was existing at that time. Mayer contributed to the partnership his American business, worth slightly over 206,000 marks—less than $50,000. The German partners contributed about 2,655,000 marks. By the partnership agreement, after payment of 4½ per cent. on the capital contributed and stipulated salaries, Mayer was to receive 20 per cent. of the profits, to be credited to his capital account. The partnership agreement was made in Germany, and the principal seat of the partnership was at Friedrichsfeld, Germany, with branches at Manchester, England, and in Boston. At the time of the declaration of war, the partnership assets in Mayer's possession had grown to a little over $910,000, and his share in the European assets amounted to 2,414,056.12 marks. Of the amount in Mayer's possession, between $500,000 and $600,000 consisted of a balance remaining out of $2,500,000 sent to him by the German partners for the purpose of buying cotton waste.

After the declaration of war, the American assets were seized by the Alien Property Custodian; but in a suit brought against that officer they were ordered redelivered to Mayer upon the ground that he had a lien upon them for his share of the partnership capital and profits. *Mayer* v. *Garvan*, 270 Fed. 229, affirmed 278 Fed. 27. The value of the assets returned to Mayer was $828,072.72, losses having occurred which are not material to the present consideration.

In that case the court held that under the partnership agreement Mayer was entitled upon distribution to have out of the assets of the partnership the amount of his capital investment together with 20% of the net profits earned by the partnership, and was liable for 20% of all losses. There was, however, no evidence of the actual value of the American property or of the German or English property, nor of the liabilities of the firm; and this suit for an accounting followed. It is not disputed that the custodian is entitled to the American assets after deducting therefrom the amount of Mayer's share in all the assets.

The German partners entered an appearance in the present suit and produced at the hearing all the account books. The property in Manchester had been seized by the English Government and sold, leaving debts on account of the English branch, amounting to £35,000, which were either paid or assumed by the German part-

ners. The district court found that a few days prior to the declaration of war the value of the German mark in the currency of the United States, according to the rate of exchange then quoted, was about 18 cents. Thereafter, no rate of exchange was quoted until July 17, 1919, at which time the exchange value of the German mark was 7⅞ cents. Thereafter, its value steadily declined, until at the time of the Act of Congress declaring the state of war at an end on July 2, 1921, it was 1.35 cents; and when the hearing was begun in the present case its value was .0048 of a dollar. The district court determined that the German partners should account for Mayer's share of the German assets at their value on April 6, 1917, the American assets to be measured in terms of the American gold dollar, and the German assets correspondingly in terms of the German gold mark, which is the equivalent of 23.82 cents of the money of the United States; and upon this basis the decree was entered. The circuit court of appeals, in affirming the decree, adopted the same view. *Sub nom. Miller* v. *Mayer*, 1 F. (2d) 419. And this presents the principal question in the case and the only one requiring extended consideration.

Appellants in Nos. 232 and 234 unite in the contention that the declaration of war did not affect the title to the partnership property; that although the partnership was thereby dissolved the partners must suffer ratably from any depreciation in the value of the German assets after the dissolution and before the accounting; and that the accounting must be made upon the basis of the value of such assets at the time of the accounting, the value of the mark being taken at its then rate of exchange.

That the declaration of a state of war immediately effected a dissolution of the partnership is well settled and is not in dispute. It is likewise settled that during the war all intercourse, correspondence and traffic between citizens of this country and of Germany, which would or might be to the advantage of the enemy, were absolutely forbidden. *Conrad* v. *Waples*, 96 U. S. 279, 287; *Briggs* v. *United States*, 143 U. S. 346, 353. The effect of War Trade Regulations No. 802, July 14, 1919, and No. 814, July 20, 1919, we shall consider further along.

The reasons for, and the limitations upon, the rule have been frequently stated. War between nations is war between their individual citizens. All intercourse inconsistent with a condition of hostility is interdicted, *The Rapid*, 8 Cranch 155, 162-163, for

54 340

fear that it may give aid or comfort to, or add to the resources of, the enemy. Moreover, as said by this court in *United States* v. *Lane*, 8 Wall. 185, 195, "If commercial intercourse were allowable, it would oftentimes be used as a color for intercourse of an entirely different character; and in such a case the mischievous consequences that would ensue can be readily foreseen." But war is abnormal and exceptional; and, while the supreme necessities which it imposes require that, in many respects, the rules which govern the relations of the respective citizens of the belligerent powers in time of peace must be modified or entirely put aside, there is no tendency in our day at least to extend them to results clearly beyond the need and the duration of the need. The purpose of the restriction is not arbitrarily and unnecessarily to tie the hands of the individuals concerned, but to preclude the possibility of aid or comfort, direct or indirect, to the opposing forces. It is that purpose which gives birth to the rule and indicates its limits. The rule is simply "a belligerent's weapon of self-protection." *Daimler Co.* v. *Continental Tyre, etc., Co.*, [1916] 2 A. C. 307, 344. And it applies even where the trading is with a loyal citizen, if he be resident in the enemy's country, since the result of his action may be to furnish resources to the enemy. *Id.*, 319; *Janson* v. *Driefontein Consolidated Mines*, [1902] A. C. 484, 505. The whole tendency of modern law and practice is to soften the "ancient severities of war", and to recognize, increasingly, that the normal interrelations of the citizens of the respective belligerents are not to be interfered with when such interference is unnecessary to the successful prosecution of the war. Private rights and duties are affected by war only so far as they are incompatible with the rights of war. See, generally, *Kershaw* v. *Kelsey*, 100 Mass. 561, 568-574, where the question is elaborately reviewed in an opinion by Mr. Justice Gray which has several times received the approval of this court; *Briggs* v. *United States, supra*, p. 353; *Williams* v. *Paine*, 169 U. S. 55, 72; *Birge-Forbes Co.* v. *Heye*, 251 U. S. 317, 323.

Thus, where a contract has been performed before the advent of war and nothing remains but the payment of money, the right to collect is not destroyed, but only the remedy suspended until the termination of the war. *Hanger* v. *Abbott*, 6 Wall. 532, 537; *Brown* v. *United States*, 8 Cranch 110, 123; *New York Life Ins.*

Co. v. *Statham*, 93 U. S. 24, 31; *Crutcher* v. *Hord and wife*, 67 Ky. 360, 366; *Mutual Benefit Life Ins. Co.* v. *Hillyard*, 37 N. J. L. 444, 465. Agencies, created before the war, and not requiring intercourse across the enemy's frontier, such as for the collection of debts, preservation of property, and so forth, are not terminated by war. See, generally, *Ward* v. *Smith*, 7 Wall. 447, 452-453; *Quigley's Case*, 13 Ct. Cl. 367, 371; *Anderson* v. *Bank*, 1 Fed. Cases 838, No. 354; *Lamar* v. *Micou*, 112 U. S. 452, 464. And in the case of contracts made before the war for the delivery of goods, it is entirely lawful to make delivery during the war within the United States. The thing forbidden is placing property or money within the power of the enemy, "not in delivering it to an alien enemy, or his agent, *residing here*, under the control of our own government. . . . In such a case, the interests of commerce are perfectly compatible with the rights of war; and public policy does not forbid the transfer." *Buchanan* v. *Curry*, 19 Johns. 137, 141.

And so here, we have to deal not with a contract made during the war or requiring commercial or other intercourse across military lines, but with an adjustment of rights, after the restoration of peace, under lawful articles of partnership entered into before, and existing at the outbreak of, the war. The advent of a state of war put an end to the partnership and postponed all remedies relating to the dissolution; but it did not petrify rights and duties resulting therefrom. Its effect only was to suspend the enforcement of the obligation of each of the partners in respect of the assets and past transactions of the partnership; and the essential inquiry now is: What was the obligation which resulted from the dissolution?

Upon the dissolution of a partnership, the general rule is that the liquidating partner or partners must settle up the partnership affairs within a reasonable time and, after payment of the partnership debts and liabilities, divide the proceeds among the partners according to their interests. *Clay* v. *Field*, 138 U. S. 464, 473. The rule is not different because the dissolution is the result of war. *Stevenson & Sons* v. *Aktiengesellschaft, etc.*, [1918] A. C. 239, 246. But in the case of such a dissolution, in the absence of legislation to the contrary, a settlement is legally impossible until the close of the war, because of the rule forbidding intercourse across the enemy's frontier and denying access by enemy citizens

to our courts; although it is entirely compatible with the rule to recognize the right and duty of the enemy partners to care for and preserve the assets of the co-partnership in the possession of each for their mutual benefit when the war has ended. To say otherwise, because an enemy may realize a benefit after the war has come to an end, is utterly to misapply the principle upon which the non-intercourse rule is based and to confound the suspension of the remedy with the loss of the right. "The prohibition against doing anything for the benefit of an enemy contemplates his benefit during the war and not the possible advantage he may gain when peace comes." *Daimler Co.* v. *Continental Tyre, etc. Co., supra,* p. 347; *Stevenson & Sons* v. *Aktiengesellschaft, etc., supra,* pp. 249, 253, 254.

In the present case, the adjustment of the account as among the partners is a matter in which the government—the war and the exigencies of the war having passed—is no longer concerned, save as its rights and duties are represented by the Alien Property Custodian. Except for the latter consideration, we are dealing with a simple suit for an accounting among partners, to be determined by the application of equitable principles. *Stevenson & Sons* v. *Aktiengesellschaft, etc., supra,* p. 248. The effect upon these principles of the dissolution of the partnership by war is certainly no greater than if it had been dissolved by death or agreement. *Buchanan* v. *Curry, supra,* pp. 142-143. In either event the relation created by the dissolution in respect of the assets is a fiduciary relation, and adjustments of rights and liabilities of the partners *inter se* are to be made in accordance with the rules governing such relationships; and in a court of equity the American partner, *ipso facto,* has no such exceptional privilege as will permit him to secure more favorable consideration than that to be accorded to his alien partners.

The argument for Mayer is that the German partners should be treated as having purchased the German assets on April 6, 1917, and compelled to account for Mayer's interest therein upon that basis and as of that date. In support of that contention we are referred to the record in the original case of *Mayer* v. *Garvan, supra,* of which the district court in the present case took judicial notice. That record has not been before us; but we accept the statements contained in Mayer's brief in respect of its disclosures,

since they do not seem to be challenged by the other parties. We are of opinion, however, that they fall short of establishing a situation for applying the theory of a purchase of the German assets by the German partners.

Undoubtedly, the German partners, instead of liquidating, continued to use the assets after the dissolution in a going business, commingling old assets with new. Also, they took in a new partner. The court of appeals said, and evidence is quoted from the Garvan record to the effect, that the assets were taken over by the German partners and thereafter treated as their own, The evidence before us in the present record is to the effect that the business in Germany was carried on during the war as it had been before; that Mayer's share of the profits was credited to him annually in the private ledger at Friedrichsfeld; and that a sum sufficient to pay out Mayer's capital interest, as shown by the books, was continuously carried on deposit in banks.

Precisely what are the facts in respect of this matter we need not stop to determine, because, in view of the conclusion we have reached, it is not material whether the German partners treated the business as their own or as that of the old partnership. The partnership was at an end; and their duty was to liquidate. They could not carry on the business in any form so as to bind Mayer. But Mayer must elect either to accept what was actually done with the burdens and benefits or to enforce against his German partners a liability based upon what they should have done. The decision below and Mayer's attitude apparently proceed upon the latter alternative, and in that view, in an ordinary case, he could justly be given no more than what he would have obtained if the liquidation had in fact been made within a reasonable time and the amount of his share promptly paid over to him. Precisely at this point, the contention in Mayer's behalf breaks down, for it ignores the circumstance, which differentiates this from the ordinary case, that, even if the assets had been promptly liquidated, nothing could have been paid to Mayer until after the removal or expiration of the non-intercourse bar. Until that time, the amount coming to Mayer necessarily would have been held by the German partners in the form of German currency, or of securities or a bank account payable in such currency, and the loss, so far as Mayer is concerned, would have resulted none the less.

In this connection the fact may not be disregarded that the German partners dealt with a situation under the abnormal restraints and perplexities of war; and it is fair to interpret what they did in the light of that situation. So viewed, we are unable to conclude that their acts were hostile to Mayer's ultimate rights or inconsistent with an honest effort to do the best possible thing with the property until the close of the war, utilizing it, in the meantime, in a way which they conceived to be to the best advantage of all concerned. It is clear that no loss was sustained by the continuance of the business; but, on the contrary, there was an asset gain. The great loss, which finally resulted, and which was little short of being complete, was due entirely to the depreciation in the value of the German mark and not to any lack of care or good faith on their part. Moreover, with the exception of plant and machinery, relatively of small value, the German assets during the entire time were in the form of German paper currency or securities, bills receivable, etc., convertible only into German paper currency, since there was no gold in circulation and the paper currency was by German law legal tender.

In whatever aspect the case is viewed or upon whatever basis the liability of the German partners be made to rest, the loss, in the final analysis, was an ineluctable consequence of the war. Is it to be borne by them alone or to be shared equally by all the partners as a common misfortune beyond the power of any of them to turn aside? That question justly cannot be solved by a strict enforcement of the ordinary rule as in ordinary cases, for here we are dealing with extraordinary and anomalous conditions, as a result of which money values were swept away by immense causes as much beyond the sway of the German partners as of Mayer. Blame for such a situation rests upon neither; and equality is equity.

This would appear more clearly if there were no American assets and the German assets were alone concerned. In that event, a decree compelling the German partners to account to Mayer upon the basis of the full value of these assets at the outbreak of the war in terms of gold, notwithstanding the destructive force of these unavoidable circumstances, would be so obviously harsh and inequitable as to shock the conscience of the chancellor. But the equities are not different because Mayer chances also to have in his

possession partnership assets—the greater part of which, it may be said in passing, had been sent to him by the German partners for trade purposes—which, by reason of the more fortunate state of American finances, had preserved their original monetary value.

Upon the whole, we think the case is fairly ruled in principle by *Clay* v. *Field, supra.* In that case, the property of the partnership consisted of a plantation in Tennessee. Prior to the outbreak of the Civil War, one of the partners died. The surviving partner continued, after his partner's death, to retain possession of the plantation, together with the slaves upon it, and to operate the property in good faith. When the war came a year or two later, the plantation was in the theatre of conflict, and at the close of the war the slaves had become free. The court recognized the general rule, as we have already stated it, that it was the survivor's duty to settle up the partnership affairs within a reasonable time and pay over to the representatives of the deceased partner the amount due them. And the court proceeded to say (pp. 473-474) that "if he [the survivor] takes the responsibility of continuing the business of the firm, and using the property of the partnership, he becomes liable for losses that may occur, and it is in the option of the representatives of the deceased partner either to insist upon a division of the profits, which may be made in thus carrying on the business, or upon being paid the amount of the deceased's share in the capital, with lawful interest thereon, after deducting his indebtedness to the firm." Strictly applied, the court said, the rule would entitle the representatives to call for an account of the share of the deceased at the time of his death with lawful interest. But, in view of the anomalous circumstances and unexpected events, the court declined to enforce the rule, saying (p. 474): "In our view, equity, when called upon to settle the mutual rights of the parties, may very properly mitigate the hardships of the rule, especially when, as in this case, the loss has occurred by public war." It was recognized that the survivor "might have sold the slaves and other property on terms which, in the light of subsequent events, would have been greatly to the advantage of his brother's estate, yet it seems clear from the evidence that the reason he did not sell was that no opportunity offered of effecting a sale of the plantation at what he deemed an adequate price." Under all the circumstances, this court agreed with the trial court

that it would be a very hard application of the general rule relating to a dissolution of partnership to compel the survivor or his estate to account for the value of the slaves, which, in a short time, were freed by operation of law and no longer articles of property. It was, therefore, held that the surviving partner was not accountable for the value of the slaves, but was accountable for the fair rental value of the property, including that of the slaves while they were slaves. See also, *Tate* v. *Norton,* 94 U. S. 746, 747-748.

Here the case for the German partners, if anything, is stronger; for, during the non-intercourse period, there never was a time when, so far as appears, Mayer's share could have been converted into anything but German marks, or when it was legally possible to pay the amount to Mayer. As soon as the non-intercourse restriction ceased to be operative, however, such payment became lawful, and an obligation arose on the part of the German partners to make it, since Mayer's share, long prior to that time, had been identified and was separable from the body of the assets. It was, in effect, a trust fund, in respect of which the German partners then owed the duty of prompt settlement. The war was formally declared to be at an end by the Act of July 2, 1921; but the right of commercial intercourse and of communication between citizens of this country and Germany was restored by the War Trade Board regulation of July 14, 1919, as amended July 20, 1919. We, therefore, conclude that the German partners should be charged with the amount of Mayer's share of the German assets at the exchange value of the German mark on July 14, 1919. The evidence in the record shows that on July 17th, three days later, the exchange value was 7⅞ cents, which seems near enough to the designated date. The depreciation of the German mark was so great that to compute its American monetary value on a nominal par basis would be to indulge in a pure fiction; and exchange values must be resorted to as the only available method of measurement. The conclusion that the exchange value of marks in American money is to be taken as of the time when commercial intercourse, and, therefore, settlement, first became lawful, rather than at the time of the accounting, finds support, by analogy, in many decisions. See, for example, *Hicks* v. *Guinness,* 269 U. S. 71, 80; *S. S. Celia* v. *S. S Volturno,* [1921] 2 A. C. 544; *In re British American Continental Bank,* [1922] 2 Ch. 575; *Société des Hotels* v. *Cumming,* [1921] 3 K. B. 459;

Di Ferdinando v. *Simon, Smits & Co.*, [1920] 3 K. B. 409; *Lebeaupin* v. *Crispin*, [1920] 2 K. B. 714.

In fixing the date upon which exchange should be calculated, the inevitable delay which must result before a judicial taking of the account must be given weight. If the liability be treated as having crystallized at the time indicated above, then a definite date is fixed for the ascertainment of exchange and the amount when found may be awarded without regard to the fluctuations in the possible date of accounting. *Lebeaupin* v. *Crispin, supra*, p. 723. In England the rule has been applied in a winding-up proceeding upon the ground that a date must necessarily be fixed on which liabilities are to be treated as definitely ascertained for the purpose of properly conducting the later winding-up of the company's affairs. *In re British American Continental Bank, supra*, p. 582. And the rule is the same whether the contract is to be performed in England or out of England, on the ground that there should not be varying rules in such cases. *Lebeaupin* v. *Crispin, supra*, p. 723.

The remaining questions in dispute require only brief consideration.

The district court held that it was impossible to calculate the profits which should be equitably assigned to Mayer's share in the German assets, and that, since there could be no payment to him during the period of non-intercourse, interest could not be allowed him upon such share,—applying the rule laid down in *Brown* v. *Hiatts*, 15 Wall. 177. But the question there arose in respect of a debt which became payable during the progress of the Civil War, and the court held that, since the debt could not be paid until the termination of the war, interest upon it could not be exacted. Here we are not dealing with the question of interest upon a debt, or really with interest at all except as a term of convenience; but with that of an allowance in lieu of unascertainable profits, to which the rule in the *Hiatts* case has no application. *Stevenson & Sons* v. *Aktiengesellschaft, etc., supra*, p. 256. An award should have been made to Mayer calculated upon the basis of interest in lieu of profits.

The district court allowed the German partners a credit for 266,432.40 marks paid by them to the German Government during the war for taxes levied against Mayer's partnership interest in 1914, 1915 and 1916. It appears that, if the tax had not been

paid, Mayer's share would have been liable to seizure by the tax collector. The circuit court of appeals reversed the ruling of the district court and disallowed the item. The obligation was one which apparently arose before the war, and, in the view we have taken of the relation of the German partners to Mayer's interest in the assets, we think the payment was properly made to protect the fund and that the district court was right in allowing credit for it.

Payments made during the war to relatives of Mayer do not rest upon like considerations; and we agree with the action of the circuit court of appeals in disallowing them. These payments were based upon directions, said to be of a continuing character, given before the war; but which were brought to an end by the advent of war. This results not on the ground that the payments were contrary to public policy, but upon the ground that the outbreak of hostilities produced such a fundamental alteration in the relations of the parties that we cannot assume a continuance of authority to make such payments in the absence of evidence of Mayer's assent thereto. *Insurance Co.* v. *Davis*, 95 U. S. 425, 429; *Williams* v. *Paine*, *supra*, p. 73.

In respect of other items, either allowed Mayer or disallowed the German partners, we see no reason to differ with the conclusions of the circuit court of appeals.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.